

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, January 18, 2016

SUBJECT	DESCRIPTION	PRESENTER
Introductions	Introduction of Page Aleena Follett and Intern Kanoa Gordon	
Presentation	Magistrate Judges Review Administrative Office of the Courts - Introduction	Senior Judge & Interim Deputy Admin. Director of the Courts Barry Wood
	Magistrate Judges Overview	Judge Michael Oths District 4
	Child Protection	Judge Anna Eckhart District 1
	Family Court Services	Judge Kent Merica District 2
	Juvenile Courts	Statewide Juvenile Justice Judge Mark Ingram, District 5
	Domestic Violence	Judge Rick Bollar District 5
	Criminal Courts	Judge Rick Carnaroli District 6
	Problem Solving Courts	Judge Ryan Boyer District 7

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, January 18, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) meeting to order at 1:30 p.m.

INTRODUCTIONS: **Chairman Lodge** introduced Committee Page Aleena Follett, and Committee Intern Kanoa Nol, which is a name change from the Agenda..

PRESENTATIONS: **Senior Judge Barry Wood** provided the Committee with an overview of the Idaho State Judiciary, established by Idaho Code, with seven Judicial Districts. **Judge Wood** explained that the Judiciary has two types of courts:
1) Appellate Courts consisting of the Supreme Court, with the Chief Justice and four justices; and the Court of Appeals, with the Chief Judge and three judges; and
2) Trial Courts consisting of the District Court with 45 judges, and the Magistrate Court with 91 judges (see Attachment 1).

Magistrate Court Judges who would be presenting were introduced by **Judge Wood**.

Judge Michael Oths, Magistrate Judge, 4th District, cited statistics relative to the number of filings in the Magistrate Court in 2015. He explained the type of cases the Magistrate Courts address and the demographics of the Magistrate Court. The Committee appreciated receiving a list of the Idaho Magistrates including their districts and counties (see Attachment 2).

Judge Anna Eckhart, Magistrate Judge, 1st District, presented a detailed analysis of the Idaho Child Protective Act (Act), emphasizing that "at all times the health and safety of the child shall be the primary concern." She provided an overview of the Act along with the statistics for cases involving child protection and procedures for administering the requirements of the Act. **Judge Eckhart** advised the Committee that in 2012, Idaho's child welfare system was ranked No. 1 in the nation by the Foundation for Government Accountability (see Attachment 1, page 3, and Attachment 3).

Judge Kent Merica, Magistrate Judge, 2nd District, presented information on Idaho Family Court services, which include domestic relations, divorce, property division, guardianships and conservatorships. He stated that most of the cases involve child custody decisions (see Attachment 4). He noted that the Court Assistance Office provides guidance to those who are involved in the court system for the first time and do not know what to do (see Attachment 5).

Judge Mark Ingram, Magistrate Judge, 5th District, discussed the Juvenile Court system. He observed that most youth perpetrate mischief that in prior generations was dealt with by parents; today these acts are considered unlawful and are dealt with by law enforcement and the courts. Most youth grow out of this behavior, but 8 to 10 percent do not. Through the cooperation of probation, corrections, child protection, the Department of Health and Welfare, and other child-centered agencies, the courts can consider the whole makeup of these youth and the environment in which they reside. **Judge Ingram** stated that the courts are continuing to gather data to determine which methods are working to meet the needs of the youth.

Judge Rick Bollar, Magistrate Judge, 5th District, pointed out that the Domestic Violence Courts were established by Idaho Code. They deal with anything in the Family Court that involves violence. The goals of this court system are to enhance victim safety and offender accountability, provide effective case management, and coordinate information for families with multiple cases. **Judge Bollar** described the process taken by the courts, the demographics and resources involved and several of their functions (see Attachment 1, page 7).

It was brought to the Committee's attention by **Judge Bollar** that Ada County's court has been named a Mentor Court for Domestic Violence Courts. He indicated that the Supreme Court oversees these courts.

Judge Michael Oths, in the absence of Judge Rick Carnaroli, returned to the podium and summarized the variety of issues dealt with by the Criminal Courts. These include felonies, misdemeanors, infractions, arraignments, preliminary hearings, jury trials, court trials, diversionary courts, sentencing and probation violation hearings. In addition to being responsible for such diverse assignments, these judges perform on-call duty on a 24- hour basis for issuance of urgent warrants, temporary holds for mental commitment hearings and jail emergencies (see Attachment 1, page 12).

Judge Oths also discussed the use of various diversionary courts such as Veterans' Court and Drug Court. These courts handle criminal actions that are the result of uncontrollable situations.

Judge Ryan Boyer, Magistrate Judge, 7th District, spoke about Problem Solving Courts, such as Youth Court and Drug Court (see Attachment 6). These courts have treatment teams to help identify the specific problems of violators and develop effective methods to address these problems. As recent brain research has shown, individuals have difficulty with problem solving and need a different approach for analyzing and solving problems. Training of staff to deal with these young people is ongoing.

Senator Davis indicated that the magistrate judges were not included in previous fair compensation decisions. He assured the judges that judicial compensation would be addressed this session.

Senator Jordan asked for clarification regarding the number of districts that have Court Appointed Special Advocates (CASA) and Domestic Violence Courts.

Judge Wood replied that six of the seven have Domestic Violence Courts and all districts have CASA.

Senator Lee expressed appreciation for the commitment made by the judges and their families.

Senator Lodge also expressed appreciation for the commitment made by the families who sometimes have to deal with tough situations. She complimented the judges for being versatile in their abilities.


Judge Wood reiterated his appreciation for the extraordinary amount of work the magistrate judges do and for always striving to provide a better service. He added that they deal with people in distress in the most professional way.

ADJOURNED: **Senator Lodge** adjourned the meeting at 2:47 p.m.

Senator Lodge
Chair

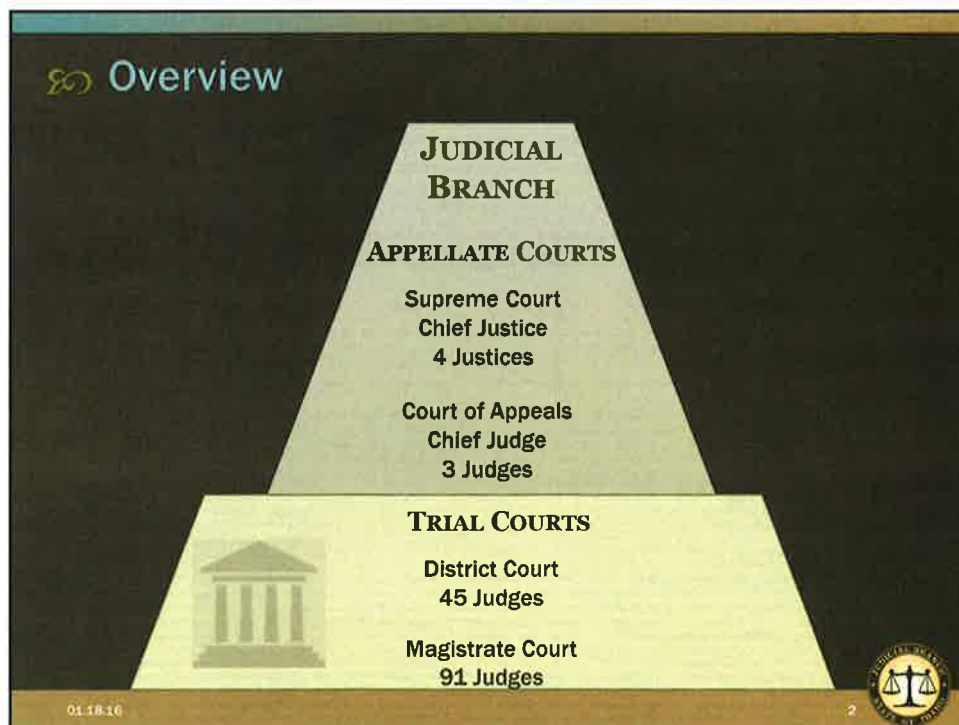

Carol Cornwall
Secretary

Idaho State Judiciary



Presentation by Magistrate Judges to the
SENATE JUDICIARY & RULES COMMITTEE
JANUARY 18, 2016
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
JANUARY 19, 2016

INTEGRITY
FAIRNESS
INDEPENDENCE
RESPECT
EXCELLENCE
INNOVATION



Idaho Code – Chapter 22

- **1-2201. Magistrate division of district court – Established.**

Pursuant to the provisions of section 2 of article V of the Idaho Constitution there is hereby established in each county of the state of Idaho a magistrate division of the district court.

3

Idaho's Judicial Districts



4

Agenda for Today

- > Administrative Office of the Courts
Judge Barry Wood
Introduction
- > Fourth Judicial District
Judge Michael Oths
Who we are and what we do
- > First Judicial District
Judge Anna Eckhart
Child Protection
- > Second Judicial District
Judge Kent Merica
Family Court Services
- > Fifth Judicial District
Judge Mark Ingram
Statewide Juvenile Justice Judge
- > Fifth Judicial District
Judge Rick Bollar
Domestic Violence
- > Sixth Judicial District
Judge Rick Carnaroli
Criminal Courts
- > Seventh Judicial District
Judge Ryan Boyer
Problem Solving Courts



CHILD PROTECTION IN IDAHO

- IDAHO CODE 16-1601
- The Child Protective Act
- Enacted by you, the Legislature, provides the legal framework for cases involving abused, neglected or abandoned children are processed through the judicial system.

IT WORKS WELL!!!

- In 2012, Idaho's child welfare system was ranked number 1 in the nation by the Foundation for Government Accountability
- This is a non-profit government oversight committee that judged all 50 states and the District of Columbia on 11 outcomes and 41 data measures, including:
 - How quickly they reacted to abuse allegations
 - Whether they made sure abused children were put in safe, permanent homes quickly.
 - Whether foster care settings were supportive, safe, home-like and stable.
 - Their work to reduce abuse and neglect

HOW DOES A CHILD PROTECTION CASE START?

- A law enforcement officer can shelter a child whose safety is at risk—meth labs or during drug busts or criminal investigations.
- A judge can expand a juvenile correction proceeding into a child protection case
- Referral to either the Department of Health & Welfare or law enforcement. By statute, any physician, teacher, social worker, mental health professional—in fact any person—having reason to believe a child is abused, neglected or abandoned is required to report to either the Dept. of H & W, or law enforcement.

Anatomy of a Child Protection Case

- Once a case is filed, we are required to hold a hearing within 48 hours to determine whether reasonable grounds exist to support the allegations and whether the child should return home.
- We are then required to have a trial within 30 days, a Case Plan hearing 30 days after that, and then review hearings no less than every 6 months.
- At these hearings, we determine whether efforts should be directed toward reunification or permanent placement outside the home.
- We are required to make a finding whether the Department's efforts have been reasonable to avoid out-of-home placement at every hearing.

Anatomy, cont.

- I mention these requirements, particularly the time requirements, because federal funding (Title IV-E funds) for these children depends on Idaho judges complying with these requirements.
- Child Protection files are audited by the federal government. If we mess up, the kids lose funding.

GUARDIAN AD LITEM

- Our ability to do what's best for these children also depends on Guardian ad Litem program.
- Each of the 7 judicial districts now has GAL – or what we sometimes call CASA—programs, comprised of citizen volunteers who go through specific training to serve as independent advocates for each child.
- In fiscal year 2015, GAL volunteers contributed **18,118** hours, roughly the equivalent of 9 full-time positions, to advocate for Idaho's abused and neglected children.
- Funding for the training of these volunteers comes from you (2/3 of funding) and the remainder from community donors.

FISCAL YEAR 2015

- The Department of Health and Welfare received over 22,000 referrals related to child safety.
- Of those referrals, 8,983 were investigated/assessed (specific classifications are in handouts)
- Of those, investigations/assessments, 758 Child Protection cases were filed.
- Many investigations were resolved by the parents cooperating with the Department without judicial intervention.
- There were 7,269 hearings held with an overall compliance rate of 88%*.

The core of Child Protection

- TO ENSURE THAT EVERY CHILD THAT SHOULD BE IN CARE IS IN CARE, BUT NOT A SINGLE CHILD MORE; AND TO ENSURE THAT EVERY CHILD THAT IS IN CARE IS IN A SAFE NURTURING PLACEMENT THAT IS SUPPORTIVE OF THE PERMANENCY PLAN FOR THE CHILD.

Domestic Violence Courts

- Family safety
- Offender accountability

Domestic Violence Courts

Created with support of the Legislature

- Passage of [Idaho Code 32 – 1408\(3\)](#)
- Providing funding for Domestic Violence Court Coordinators

Domestic Violence Courts

- Enhance victim safety and offender accountability
- Provide effective case management
- Coordinate information for families with multiple cases
- Use one judge to process cases

Domestic Violence Courts

DV Courts process:

- Domestic violence cases (criminal)
- Protection order cases (civil)
- Related divorce, custody, child support cases
- Family violence criminal misdemeanor cases

Domestic Violence Courts

Court's Objective:

- Provide a safe environment for families at risk
- Create coordinated responses to family issues
- Avoid separate judges providing different rulings
 - Confusing
 - Have negative consequences to the family

Domestic Violence Courts

Statewide Domestic Violence Court Coordinator – Amber Moe

- DV Courts and Coordinators in 6 of 7 Judicial Districts
- Different demographics and resources
 - **Policies and Guidelines**
 - Research-based best practices
 - Identify essential elements for Domestic Violence Courts
- All have
 - Fast-track criminal case disposition
 - Ongoing judicial reviews

Domestic Violence Courts

- Offenders held to a higher level of accountability
- Concentrate responsibility in a single judge
- Monitor compliance with court orders
- Oversee treatment programs
- Allow victims a greater voice
- Promptly address critical family issues
- Provide resources for victims early in the process

Domestic Violence Courts

Court Coordinators are critical to the effective operation

- Identify gaps and barriers in services
- Create services and treatment options for victims and offenders in rural areas
- Facilitate development of coordinated community response
- Improve the handling of domestic violence cases within the justice system

Domestic Violence Courts

Ada County Domestic Violence Court as Mentor Court

- Model and host for site visits for judges and prosecutors
- Bonneville County District wide and High Intensity DV Court
- All Districts are participate in evaluations

CRIMINAL PROCEEDINGS

- Felonies, Misdemeanors and Infractions
- Arraignments
- Preliminary Hearings
- Jury Trials, Court Trials, Diversionary Courts
- Sentencing
- Probation Violation Hearings
- On Call Duty – Warrants, Temporary Holds for Mental Commitment Hearings, Jail Emergencies

District 4 – Michael Oths (Who we are and where we come from)

- **2015 - 355,000 total filings in Idaho, 96% in Magistrate Court**
- **2015 – 188,000 filings (excluding infractions), 92% in Magistrate Court**
- **Magistrates handle:**

- **Felony initial proceedings**
- **Misdemeanors**
- **Child Protection**
- **Juvenile**
- **Divorce / Custody**
- **Guardianships / Conservatorships**
- **Probate**
- **Small Claims**
- **Civil Cases**

- **Demographics:**

- **91 Magistrates, at least one in each county**
 - (◆)
 - ♦ **74 men; 17 women**
 - ♦ **Median age is 56 – about half are in their 50s**
 - ♦ **Median age at time of appointment is 43**
 - ♦ **Median is 8 years on bench**
- **Prior Experience**
 - ♦ **46 came from private practice**
 - ♦ **26 came from county prosecutor office**
 - ♦ **16 “other”**

- **Magistrate Commissions, *Idaho Code § 1-2201, et. seq.***

- **Disciplinary Complaints by Idaho Judicial Council**

against judges

(◆) **Demographics from 2014 survey)**

IDAHO MAGISTRATES, AS OF JANUARY 2016

Name	D	County	Name	D	County
Douglas Payne	1	Benewah	Dan Steckel	4	Ada
Deb Heise	1	Bonner	Kevin Swain	4	Ada
Lori Muelenberg	1	Bonner	Jill Jurries	4	Ada
Justin Julian	1	Boundary	William Harrigfeld	4	Ada
Timothy Van Valin	1	Kootenai	Joanne Kibodeaux	4	Ada
Rob Caldwell	1	Kootenai	Lynnette McHenry	4	Ada
Scott Wayman	1	Kootenai	John Hawley	4	Ada
Clark Peterson	1	Kootenai	Roger Cockerille	4	Boise
James Stow	1	Kootenai	David Epis	4	Elmore
Anna Eckhart	1	Kootenai	George Hicks	4	Elmore
James Combo	1	Kootenai	Lamont Berecz	4	Valley
Daniel McGee	1	Shoshone	Jennifer Haemmerle	5	Blaine
Randy Robinson	2	Clearwater	Daniel Dolan	5	Camas
Jeff Payne	2	Idaho	Blaine Cannon	5	Cassia
John Judge	2	Latah	Mick Hodges	5	Cassia
Stephen Calhoun	2	Lewis	Casey Robinson	5	Gooding
Gregory Kalbfleisch	2	Nez Perce	Tom Borreson	5	Jerome
Kent Merica	2	Nez Perce	Mark Ingram	5	Lincoln
Michelle Evans	2	Nez Perce	Rick Bollar	5	Minidoka
John Meienhofer	3	Adams	Roger Harris	5	Twin Falls
Thomas Sullivan		Canyon	Calvin Campbell	5	Twin Falls
Jayne Sullivan	3	Canyon	Tom Kershaw	5	Twin Falls
J.R. Schiller	3	Canyon	Bryan Murray	6	Bannock
Gary DeMeyer	3	Canyon	Rick Carnaroli	6	Bannock
Debra Orr	3	Canyon	Tom Clark	6	Bannock
Dayo Onanubosi	3	Canyon	Scott Axline	6	Bannock
Jerold Lee	3	Canyon	Steve Thomsen	6	Bannock
Frank Kotyk	3	Canyon	Todd Garbet	6	Bear Lake
Randall Kline	3	Canyon	David Kress	6	Caribou
Tyler Smith	3	Gem	Eric Hunn	6	Franklin
Dan Grober	3	Owyhee	David Hooste	6	Oneida
Brian Lee	3	Payette	Paul Laggis	6	Power
Robert Jackson	3	Payette	Ryan Boyer	7	Bingham
Gregory Frates	3	Washington	Scott Hansen	7	Bingham
Russell Comstock	4	Ada	Mark Riddoch	7	Bonneville
Cathleen M-Irby	4	Ada	Michelle Mallard	7	Bonneville
Tom Watkins	4	Ada	Steve Gardner	7	Bonneville
Laurie Fortier	4	Ada	Ralph Savage	7	Butte
Carolyn Minder	4	Ada	Penny Stanford	7	Clark
James Cawthon	4	Ada	James Barrett	7	Custer
Christopher Bieter	4	Ada	Gilman Gardner	7	Fremont
Andrew Ellis	4	Ada	Robert Crowley	7	Jefferson
Theresa Gardunia	4	Ada	Stephen Clark	7	Lemhi
Diane Walker	4	Ada	Mark Rammell	7	Madison
David Manweiler	4	Ada	Jason Walker	7	Teton
Michael Oths	4	Ada			

ANNA M. ECKHART
MAGISTRATE JUDGE, KOOTENAI COUNTY
FIRST JUDICIAL DISTRICT

IDAHO CHILD PROTECTIVE ACT
IDAHO CODE 16-1601 – 16-1643

Idaho Code 16-1601 states in pertinent part:

The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing, including periodic review of child abuse, abandonment and neglect cases, and the protection of any child whose life, health or welfare is endangered. At all times the health and safety of the child shall be the primary concern.

In 2012, Idaho's child welfare system was ranked No. 1 in the nation by Foundation for Government Accountability

The anatomy of a Child Protection Act case and Title IV-E compliance requirements.

In state fiscal year 2015:¹

IDHW received 22,065 referrals statewide related to child safety.

- 13,082 were considered “information & referral only”
- 8,983 were investigated/assessed
 - 6,335 classified as neglect
 - 2,209 classified as physical abuse
 - 431 classified as sexual abuse
 - 8 classified as “other”
- Of those 8,983 cases assessed
 - 2,188 ranked as Priority 1 (~24.36%)
 - 1,401 ranked as Priority 2 (~15.6%)
 - 5,394 ranked as Priority 3 (~60.1%)

¹ Statistics provided 12/21/15 by Research Analyst at the Idaho Department of Health of Welfare

- Of those 8,983 cases assessed
 - Approximately 12.2% of referrals were substantiated and 758 Child Protection Petitions were filed
 - 1,174 kids entered foster care
 - Equates to a 5.3% “conversion rate” from the original number of referrals.

543 cases utilized in-home services (This is the number of cases with In-Home services that did not involve any Foster Care during the year)

758 Child Protection petitions were filed.

Total number of children in care (new and previous intakes) = 2,434 children
More children exited care than entered in FY15 (1,205 children exited care)



**Report to the Governor
C.L. "Butch" Otter
and the
2nd Regular Session of the
63rd Idaho Legislature**



**Idaho Supreme Court
451 W. State Street
P.O. Box 83720
Boise, ID 83720-0101
208-334-2246
isc.idaho.gov**

Idaho Family Courts

Charting a Course for the Future

Idaho's Family Court Services (FCS) offices, located in each judicial district, were established to meet the needs of the court while fostering family relationships and protecting families in transition. As provided by Idaho Code § 32-1402(4), FCS, among other responsibilities, assist families in need to connect with appropriate resources for the family, provide assessment information to the court to assist in early case resolution, and conduct workshops to educate the parties on the adverse impact of high conflict family disputes.

The marriage may end and a contract dissolved, but the needs of children and families are paramount. The Children and Families in the Courts Committee has identified core services to be coordinated by FCS district managers. In FY2015, the following services were provided:

- Pre-filing workshops (1,041 parents)
- Co-parent Education (8,455 parents)
- Civil Intake Screening (1,235 cases)
- Supervised Access (209 cases)
- Mediation (1,659 cases)
- Brief Focused Assessments (185 assessments)
- Parenting Time Evaluations (56 evaluations)

Core services are provided for in all districts through various practices. The following paragraphs highlight several aspects of core services.

As a result of FCS manager expertise, early, less restrictive, less expensive interventions are offered that benefit all involved. FCS offices work closely with and support the Court Assistance Office, domestic violence coordinators and the guardianship and conservatorship coordinators. Services offered in a collaborative manner include pre-filing workshops, assistance with parenting plan development, referrals, shared resources, cross training, and materials. This process reduces the chances of sending families to inappropriate services or agencies.

Fifth Judicial District Trial Court Administrator, Linda Wright, states that professional working relationships fostered by FCS managers maximize efficiency of service delivery and coordinate programming, providing families with guidance and support.

Rural FCS delivery has its unique challenges. FCS managers continue to expand core services to families and communities who face needs due to rural, social, and economic conditions, compounded by isolation, scarcity of services, and extreme weather conditions. FCS offices have improved their presence by making the public aware of available services to courts across the state. This has been accomplished in part by moving FCS offices into the courthouse, increasing the capacity of the FCS to serve families. District-wide education for members of the Bar about available resources has opened the line of communication for service integration and coordination. Stakeholder education and increased visibility of court services help increase the use of and access to FCS.

According to the census, Idaho's Hispanic population grew 73% in the first decade of this century. Research supports the value of co-parent education early in the judicial process for divorcing and never-married parents. FCS recognized the need for Spanish speaking programs and developed a Spanish version of the co-parenting education class used in the Third

Judicial District. The Spanish co-parent education program gives parents the information they need to navigate difficult relationships and parenting issues related to family transitions in their language. The class helps parents understand their children's developmental needs, the value of both parents, and how to keep children out of the middle of conflict. The goal is increased family well-being and decreased court time and costs. Parents are saying, *"It was helpful to get this information in Spanish."*

Mediation offers a cooperative and beneficial method to resolve disputes with families in transition. In mediation, decisions are reached jointly by the parties, unlike litigation, where decisions are sometimes imposed in an adversarial process. When mediation is successful, the parties have avoided an expensive and possibly destructive courtroom battle and there is a greater likelihood of cooperative parenting that is in a child's best interest. Idaho's FCS have fully embraced mediation as a means to resolve parenting time and access disputes. In the First Judicial District, court-referred mediation with community providers has resulted in a 76% agreement rate over the past 7 years. The process helps parents communicate better and see each other's perspective.

Professionals in the Fourth Judicial District using the screening tool have this to say ...

The screening tool is well-organized and thorough. The tool collects necessary information to direct a case to appropriate services given its unique circumstances. Incorporating a systematic screening process to help identify domestic violence, the tool provides for the safety and well-being of all involved.

Civil Intake Screenings are intended to provide judges with recommendations to help direct families to appropriate services in contested cases. In a collaborative effort, Family Court Services restructured the Idaho Civil Intake Screening tool. The screening tool helps to protect vulnerable people involved in the court process such as victims of domestic violence and children who may be at risk. The screening tool is designed to reduce the burden of contentious litigation on families by connecting them with appropriate services early in the case management process. The tool provides for effective allocation of professionals and services, and more efficient use of court resources.

Brief Focused Assessments (BFAs) were developed to assist with judicial decision making. It can be a challenge to provide

Seventh Judicial District Magistrate Judge Penny Stanford states:

This tool (BFA) has been terrific in helping to quickly resolve cases and help these children begin healing instead of being even more damaged through trial.

family courts with reliable information about children's needs and parental competence. BFAs might address such issues as overnight visitation, age-appropriate visitation arrangements, and the educational or medical needs of the child(ren). Traditionally custody evaluations were recommended, but with limited resources, BFAs are utilized in Idaho courts to focus on one or two narrowly defined or specific issues to assist parents and courts to resolve a dispute. Some advantages of BFAs are: they are cost effective, less intrusive, and can be completed in less time, therefore keeping a case on track to resolution.

Families of all income levels wrestle with financial implications of separation and divorce. The legal process for self-represented parties can be frightening and intimidating. FCS and Court Assistance Offices provide pre-filing workshops for self-represented parents. These workshops give parents information related to the preparation of court-approved forms, child support, and research-based, developmentally appropriate parenting plans. These workshops provide valuable assistance and parents in the Second Judicial District declare, *"This is an excellent service to offer the public; Personalized instructions were very helpful; Instructors were very patient, understanding, and helpful."*

The Idaho Supreme Court is committed to resolving cases involving children and families through the combined efforts of the courts, the family, and community services in ways that are least adversarial and intrusive. Family Court Services are essential to attain this goal.

For further information, contact Senior Judge Barry Wood
Email: bwood@idcourts.net /// Phone: 208-334-2246





Court Assistance Offices

Promoting Equal Access to Justice

Within each county, a Court Assistance Office (CAO) promotes equal and meaningful access to the courts. Court Assistance Offices accomplish this by providing referrals to resources, court forms, review of court forms, and legal information to help self-represented litigants better understand their rights and responsibilities.

To illustrate the impact of how some of these services ensure access to the courts, we can follow one parent's story as she moved through the court process unrepresented by an attorney.

THE FORMS WORKSHOP

A Canyon County mom, Jane, (not her real name) sought help at the local forms workshop in obtaining a custody and child support decree.

During the workshop, Jane was able to complete the necessary court forms while CAO staff answered her questions, and calculated child support. Jane also received assistance from family court services staff in creating a workable parenting time schedule. CAO staff reviewed the court forms for completeness and instructed her on filing court forms, serving the other party, and obtaining the final custody decree. When Jane later sought modification of the parenting time schedule and custody arrangement, the workshop was also available for that process. There was no cost to attend the local workshop and she was able to download all necessary court forms from the CAO Website.

About those served last year

- Over 51,000 people were served by phone, mail, email, video conference, and in person
- 66% of those surveyed were at or below 125% of the poverty level
- 56% of those surveyed had an income less than \$20,000 per year

More About Forms Workshops

- Pre-filing forms workshops are now being offered in 6 judicial districts
- The rural counties of Cassia and Minidoka are now offering workshops regularly
- The Seventh Judicial District will soon begin offering their forms workshop by video-conference to all 10 counties in the district

Expansion of Attorney Workshops

- Efforts were made to expand these workshops to rural counties and they are now being offered in Cassia, Minidoka, and Clearwater counties.
- The Bannock and Canyon County CAOs collaborated with the Idaho Volunteer Lawyers Program, local District Bar Associations, Idaho Military Legal Alliance, and additional local partners to create the Idaho Service Members and Veterans Legal Clinics in those counties.

ATTORNEY WORKSHOP

Following the initial case, Jane again sought assistance to collect daycare costs owed by the other parent and wanted to pursue contempt. Contempt forms have not been developed through the Court Assistance Office due to the complexity of the process. However, she opted to use the available forms for obtaining a judgment for the unpaid costs.

When her questions about the collection process moved into an area that would require legal advice, the CAO staff referred her to the monthly attorney workshop. Jane attended the attorney workshop for legal advice and with that advice was successful in using CAO forms to file her request with the court. Although Jane

was unable to afford an attorney to represent her, she represented herself at the court hearing and prevailed by obtaining a judgment for the daycare costs.

Report to the Governor
C.L. "Butch" Otter
and the
2nd Regular Session of the
63rd Idaho Legislature



Idaho Supreme Court
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Following her experience, Jane had this to say about working with the CAO office: *"I am extremely thankful for the Court Assistance Office and honestly don't know what I would have done without them. No matter how many questions I ask and how often I ask them, [they] have always been more than happy to assist me...[the CAO] has always explained the forms and processes thoroughly and in a way I can understand. Without their help in preparing for hearings, I would have been lost."*

This is only one of many examples of how self-represented individuals utilize available CAO services to access the courts, and the same services are always available to both parties involved in a case. Although Court Assistance Offices may have limitations because officers cannot provide legal advice or representation, this example demonstrates how the bank of information, court forms, and services that have been developed work to ensure meaningful access to the courts for self-represented individuals.

NEW COURT ASSISTANCE OFFICE FOR ELMORE, VALLEY AND BOISE COUNTIES

A new full-time court assistance officer position was created to serve the counties of Elmore, Valley, and Boise Counties. Due to the distance and weather-related challenges of reaching these counties, the new office received the equipment necessary for video conferencing and remote review of court forms.

This officer will also work on statewide projects, which include technology projects to improve accessibility and delivery of CAO services. Adding this position moves us forward towards the goal of providing an increased level of services to the self-represented statewide.

COURT ASSISTANCE OFFICES COLLABORATE WITH LAW STUDENTS

People in the Treasure Valley have benefitted from a collaboration between universities and the CAOs. This summer, the Canyon County Court Assistance Office coordinated with University of Idaho College of Law in recruiting an extern to work in the office for the summer. The opportunity was a great learning experience for the student and the CAO staff.

The first-year law student had this to say about the experience: *"This office is an invaluable resource that benefits the litigants as well as the court system by taking the time to sit down with many pro-se's and assisting them to the best of their ability. Over the course of my externship, I was able to witness first-hand the benefits that this office provides to a community that is desperately in need. This externship provided me with much practical experience that I will be able to apply going forward in my legal career and I very much look forward to my continuous work with the Court Assistance Office."*

The statewide Court Assistance Offices also participated in the Concordia University School of Law Mentorship Project Class and received valuable assistance from law students on two very important projects. The students helped develop and draft content for an informational webpage for the CAOs website, and also helped create informational how-to videos that will be made available on the CAOs website. Hopefully, this is only the beginning of the collaborative efforts that can be expected from partnering with the local law schools.

EMERGING TECHNOLOGY WILL ALLOW E-FILEING OF CAO COURT FORMS

The project for developing interactive interviews to complete CAO forms continues to progress. Once e-filing becomes available, the completed forms will be directly linked to the court e-filing system. This will allow people to complete and file CAO court forms anywhere that Internet access is available. Early versions of the interviews will be available for use with a printing option until e-filing becomes available.

The Court Assistance Offices had a great year and looks forward to increasing and improving the available services and ensuring equal and meaningful access to Idaho courts.

For further information, contact Senior Judge Barry Wood
Email: bwood@idcourts.net /// Phone: 208-334-2246





Report to the Governor
C.L. "Butch" Otter
and the
2nd Regular Session of the
63rd Idaho Legislature



Idaho Supreme Court
451 W. State Street
P.O. Box 83720
Boise, ID 83720-0101
208-334-2246
isc.idaho.gov

Problem-Solving Courts and Sentencing Alternatives

Attachment 6

Effective Solutions to Reduce Recidivism in the Community

All three branches of government have demonstrated a commitment to ensuring that evidence-based practices are utilized when sentencing and supervising offenders in the community. Idaho judges understand the critical need to ensure public safety. In the execution of their duties, judges need a full range of sentencing alternatives to address long-term solutions to repeated criminal behavior. From problem-solving courts for high-risk and high-need offenders, to felony offenders with substance abuse and/or mental health issues, and the availability of substance abuse treatment for misdemeanor offenders, Idaho strives to address the complex issues to reduce recidivism.

PROBLEM-SOLVING COURTS TODAY

Since the first two drug courts began in Idaho in 1998, problem-solving courts have expanded to a total of 68 courts dealing with offenders at high risk of recidivism and who have significant behavioral health treatment needs. These offenders are at risk of incarceration in a prison system that is becoming increasingly overcrowded and costly. Problem-solving courts offer an important sentencing option for Idaho courts. There are now:

- 27 Felony Drug Courts
- 11 Adult Mental Health Courts
- 2 Juvenile Mental Health Court
- 6 Misdemeanor / DUI Courts
- 6 DUI Courts
- 6 Juvenile Drug Courts
- 4 Veterans' Treatment Courts
- 3 Child Protection Drug Courts
- 1 Misdemeanor Mental Health Court
- 1 Young Adult Drug Court
- 1 Domestic Violence Drug Court

Partnerships with executive branch agencies including the Department of Health and Welfare Division of Behavioral Health, Office of Highway Safety and Division of Veterans Services have expanded funding options for treatment for persons in problem-solving courts. These effective partnerships have led to positive outcomes:

- Idaho adult felony drug participants had a combined recidivism and program failure rate that was 12% lower than those of felony offenders that were on retained jurisdiction, and 15% lower than probationers.
- For juveniles that participated in a juvenile drug court, the odds of recidivating were 20% lower than for juvenile probationers!
- The establishment of Veterans Court Standards and Guidelines for Effectiveness and Evaluation — the first in the nation — for the four veterans treatment courts.

FELONY SENTENCING COMMITTEE

The Felony Sentencing Committee has provided crucial judicial leadership throughout the implementation of the Justice Reinvestment Act [SB1357]. The Committee has been involved with the review of recommendations from working groups focused on the restructure of discretionary jail, early discharge from supervision, development of a Limited Supervision Unit within the Idaho Department of Correction, and design of a supervision matrix with emphasis on incentives and sanctions for those on supervision.

In addition, the Committee has sought to improve information provided to judges at sentencing. The Committee has given ongoing feedback on the process to obtain critical mental health and substance abuse evaluations at the time of sentencing. The Committee also provided guidance to the Judiciary using outcome data on sentencing practices and recidivism rates while promoting improved community based alternatives to address gaps in delivered services.

PRETRIAL JUSTICE: JUSTICE BEGINS AT THE BEGINNING

Following a Pretrial Justice Policy Forum in Washington, D.C., the Idaho Criminal Justice Commission established a statewide subcommittee on Pretrial Justice in July 2014. The subcommittee is tasked with developing consistent, evidence-based pretrial practices to enhance the Idaho criminal justice system. This charge includes examining current pretrial justice services in Idaho and establishing statewide priorities. The subcommittee is committed to proceed in a deliberate, methodical, and thoughtful manner that reflects the values of Idaho with consideration to all stakeholders. The committee, chaired by Judge James Cawthon, has representation from a broad range of stakeholders including prosecution, defense, the attorney general's office, sheriffs, probation, victim advocates, county commissioners and Idaho Supreme Court staff. The Committee meets quarterly to continue work on the priorities and expand educational opportunities to all facets of the criminal justice system in Idaho on pretrial matters.

MISDEMEANOR SENTENCING ADVISORY TEAM: JUDICIAL LEADERSHIP TO ENHANCE SENTENCING ALTERNATIVES

The Misdemeanor Sentencing Advisory Team (MSAT) consists of magistrate judges from each judicial district who work together to enhance sentencing options for misdemeanor offenders, particularly through increasing the professionalism and capabilities of adult misdemeanor probation services statewide. The MSAT approved Pretrial Justice as a priority to support the construction of a framework for the pretrial process and to provide guidance to jurisdictions on the use of a validated risk assessment.

In addition, the Team coordinates with The Education Department of the Idaho Supreme Court to identify training opportunities to support the needs of magistrate judges. The 2015 Idaho Magistrate Judicial Conference provided an opportunity for the team to survey magistrate judges on three separate topics that included Pretrial Justice, Sentencing, and Misdemeanor Probation in Idaho. The results will assist in strategic planning and direction for MSAT.

For further information, contact Senior Judge Barry Wood
Email: bwood@idcourts.net /// Phone: 208-334-2246



AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 20, 2016

SUBJECT	DESCRIPTION	PRESENTER
PRESENTATION	Update and overview of juvenile justice in Idaho	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
<u>Docket No.</u> <u>11-1003-1501</u>	Rules Governing the Sex Offender Registry (Page 34)	Dawn Peck, Manager, Idaho State Police Bureau of Criminal Identification
<u>Docket No.</u> <u>11-1101-1501</u>	Rules of the Idaho Peace Officer Standards and Training Council (Page 39)	Victor McCraw, Administrator, Idaho POST
<u>Docket No.</u> <u>11-1104-1501</u>	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers (Page 65)	Victor McCraw, Administrator, Idaho POST

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 20, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

Chairman Lodge thanked the committee, guests and those listening on legislative streaming. She introduced Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections (IDJC), commenting that Ms. Harrigfeld is committed to the best interests of those who come into the juvenile correction system.

PRESENTATION: **Director Sharon Harrigfeld** paid tribute to those who work in the juvenile correction system. Director Harrigfeld introduced Marcy Chadwell, Community, Operations and Program Services Administrator.

Director Harrigfeld shared the mission of IDJC, stating that she would be explaining how IDJC is accomplishing that mission. (See Attachment 1.) She expressed appreciation for the support of the Change in Employee Compensation (CEC) Committee to assist in retaining dedicated and committed staff members. The impact of the dedication and commitment of staff is evident in the low number (259) of juveniles in custody.

Director Harrigfeld provided a flow chart of Idaho's juvenile justice process showing how complicated the system is. The system is based on balanced and restorative justice. IDJC is dedicated to helping juveniles become responsible citizens by developing life skills and holding them accountable for restoring their victims and communities while ensuring public safety. Research in adolescent development plays a large part in providing guidance and direction to accomplish this task. She then gave detailed insight into the achievement of the following goals:

- Ensure juvenile accountability through effective use of evidence-based practices. The facility programming of IDJC is based on research evidence and the individual needs of the juvenile. The three Quality Improvement Specialists provided by the Legislature last year have increased the IDJC's ability to continuously improve the quality of services.
- Family engagement. National survey results, as well as discussion with Idaho's judiciary and juvenile justice professionals, indicate that family engagement is one of the most important aspects for a juvenile's successful return to the community. The two Juvenile Service Coordinators approved by the last year's Legislature increased IDJC's ability to increase family engagement.
- Ensure community protection through skills improvement of juveniles returning to the community. These skills include anger management, changing thinking patterns, educational attainment, understanding triggers to addictions,

developing respect and ethical behaviors in teamwork and demonstrating honesty, integrity and trust. Skills improvement is addressed through service and service learning, including working at food banks, building fences and clearing trails.

- Risks and strengths. **Director Harrigfeld** described the risk factors contributing to youth crime as well as the protective factors. These factors are identified for each juvenile, and a plan is established to help the juvenile understand and increase control over his/her risk behaviors and to strengthen the protective factors. (See Attachment 1, page 5.)
- Positive youth outcomes. These outcomes include continuing education. There has been an increase in GED completions as well as math and reading scores. (See Attachment 1, page 6.)
- Develop a well-structured system that addresses the needs of juvenile offenders, their families and the safety of community. The IDJC is working with the community and other branches of government to promote a unified relationship with all interested entities. With the help of these other stakeholders IDJC hopes to prevent juveniles from entering the system. Not only will this be beneficial to the juveniles, it will save taxpayer dollars. (See Attachment 1, page 7.)

These goals are focused on preventing reoffending. The recidivism rate for the past year is 23 percent, lower than the average 30 percent over the last several years. **Director Harrigfeld** outlined pathways to dual involvement in which a youth may also have contact with other agencies, such as the Department of Health and Welfare. (See Attachment 1, page 8.)

Director Harrigfeld described the training program for staff, highlighting Peace Officer Standards and Training (POST) academies, Detention Clinician Training and other training entities. All aspects of training have been revised to include consideration of the continued research on adolescent brain development, trauma and mental health issues.

A detailed explanation of funding streams for juvenile justice was cited by **Director Harrigfeld**, including funding by the Legislature and the Community Incentive Project, mental health funding and reintegration funding. With this funding the Community Collaboration Project addresses keeping the juveniles in the community. Statistical graphs for performance measures and the comparison of community treatment versus commitment were shared. (See Attachment 1, pages 10 and 11.)

In fiscal year (FY) 2012 the Juvenile Justice Substance Use Disorder System (SUD) was created. The number of juveniles in the program has increased since then with the amount of Medicaid support diminishing. Since its inception, the IDJC has collaborated with stakeholders to identify needs and respond to those needs in continuing improvement of an effective youth-focused treatment system. (See Attachment 1, pages 12 and 13.)

Director Harrigfeld disclosed that the turnover rate for IDJC staff is 18 percent, with the rate for security officers being 34 percent; Idaho state government is 7 percent. She outlined steps that have been taken to help staff understand the goals of the department and to reduce turnover. (See Attachment 1, page 15.)

A Director's Dashboard provides IDJC staff with access to critical performance information showing outcome measures for the strategic plan. (See Attachment 1, page 17.) Research has been done to identify risk needs profiles that assist in matching services to individual juveniles based on the profiles (See Attachment 1, page 16.) This will help the staff be better informed regarding progress toward meeting the goals of the strategic plan.

Senator Lodge commended the Director and her staff on the amount of progress that has been made, having seen a reduction from 500 juveniles in custody to 259.

Senator Jordan requested a definition of "unsuccessful completion" as mentioned in the performance measures. **Director Harrigfeld** responded that unsuccessful completion referred to those who may have moved, not just those who did not complete the program. She assured the Senator that she would provide her with more details regarding unsuccessful completion.

Senator Burgoyne inquired what the first classification of staff was in relationship to the turnover rate. **Director Harrigfeld** replied that the first group was Rehabilitation Technicians, with a turnover rate of 18 percent. **Senator Burgoyne** then asked to what the Director attributed the 34 percent turnover rate among Safety and Security Officers. **Director Harrigfeld** related that it could be rate of pay, advancement, relocating or going back to school, among other reasons.

Senator Burgoyne solicited the Director's ideas for increasing the rate of pay. **Director Harrigfeld** advised that the 3 percent CEC was a start. She pointed out that the direct care staff, juvenile probation officers and juvenile detention officers being included in the Rule of 80 would be a positive addition to their benefit package.

Senator Lodge thanked **Director Harrigfeld** for her presentation.

**PASSED THE
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

IDAPA 11- IDAHO STATE POLICE

**DOCKET NO.
11-1003-1501**

11.10.03 - Rules Governing the Sex Offender Registry. **Dawn Peck**, Manager, Idaho State Police Bureau of Criminal Identification, advised that this rule change defines the process to determine if offenders who may want to live or work in Idaho will have to register to do so. The Idaho Supreme Court noted that the mechanism is in place for sex offenders already residing, working or attending school in Idaho and that there should be a process by which those who had not yet moved or begun to work could determine if they would have to register.

Senator Johnson inquired if striking the word "similar" at one point and leaving it in at another was intentional. **Ms. Peck** answered that it was not intentional, that it should have been stricken in both places.

Vice Chairman Nonini asked if this would be a problem if the rule were approved. **Ms. Peck** replied that it should not be a problem and that she will bring it back next year with a change to make it consistent.

MOTION:

Senator Anthon moved to approve **Docket No. 11-1003-1501**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
11-1101-1501**

11.11.01 - Rules of the Idaho Peace Officers Standards and Training (POST) Council. **Victor McCraw**, Division Administrator, POST, stated that the mission of POST is to develop skilled law enforcement professionals who are committed to serving and protecting the people of Idaho and to accomplish this standard of competence and character for those certified to carry out the public safety duties.

The changes presented are to bring POST into compliance with the FBI's criminal fingerprint restrictions relating to law enforcement agencies; to clarify certification qualifications regarding past misdemeanor convictions; and to remove language prohibiting POST from considering misdemeanor convictions related to crimes against children for some certifications. The definition of "POST certified instructor" is changed to be more descriptive. Relating to criminal records regarding fingerprints, **Mr. McCraw** explained that the rule change makes the hiring agency responsible for running the FBI fingerprint check for the person they are recommending to be certified, and to maintain those records.

Senator Davis requested clarification regarding who will retain the fingerprint records. **Mr. McCraw** affirmed that the agencies will run and maintain the fingerprint checks because it would be illegal for POST to have access to records they did not run. This is a requirement of the FBI.

Senator Jordan asked who does the fingerprint checks on students who are self-sponsored. **Mr. McCraw** replied that POST acts as the agency for self-sponsored students. There is a fee that includes the charge for the fingerprint check.

Mr. McCraw discussed the section regarding misdemeanor convictions. The original wording was confusing and sometimes misleading, so this change is to clarify that language. **Senator Burgoyne** requested a reminder of the POST rule dealing with the lawful and unlawful use of marijuana. **Mr. McCraw** replied that there is an absolute three-year prohibition on the use of marijuana by anyone seeking POST certification. Beyond three years, individuals cannot have used on a regular basis within the last five years to become certified. Beyond the five years, it is up to the agencies that send a candidate for certification to POST to make that determination.

Mr. McCraw indicated stricken language that excluded some crimes against children. The council did not want consideration of those crimes excluded as a reason to deny certification. **Senator Davis** expressed some concern that some candidates who had a questionable background might be accepted. **Mr. McCraw** explained that by removing the language in question, he and the council would be able to scrutinize the situation.

Senator Burgoyne voiced his concern regarding the discretion of POST being based on the attitudes of the POST staff rather than the nature of the crime and its seriousness as a violation of law. He also indicated that the age and the level of rehabilitation may not be considered under the revised rules. **Mr. McCraw** acknowledged the Committee's concerns. He expressed that there are safeguards in the rules that guide the consideration, both to keep those of questionable character from becoming certified as well as to be fair to individuals who have turned their lives around.

Senator Jordan pointed out that the mixture of crimes by children and crimes against children might be better addressed separately. Consideration could then be given to a candidate who committed a minor crime as a youth but matured into a responsible adult, but not to those who had perpetrated crimes against children. **Mr. McCraw** replied that those issues are addressed in other sections. **Senator Jordan** expressed continuing concerns that smaller agencies with a limited pool of applicants might use too much discretion in hiring. **Mr. McCraw** reaffirmed that POST has denied certification of individuals who have been hired by agencies and will continue to base the selection of applicants on POST standards.

Senator Davis observed that the changes strike everything that has an expressed statutory definition and instead use the phrase "misdemeanor sex crime," undefined in law. He is concerned that it is too ambiguous. He asked if that issue had been addressed. **Mr. McCraw** responded that it had not.

Mr. McCraw discussed the rule regarding closed campus academies. Some agencies specifically prefer closed campus academies. The training course is ten weeks, and having a closed campus where the candidates cannot go home at night causes a hardship for some. Striking out the mandate for closed campus provides for those who need to go home at night and reduces the cost of board and room for POST. Agencies will still be able to mandate that their candidates stay on campus, and those who live too far to commute may also choose to stay on campus.

Senator Jordan commended POST for meeting the needs of the POST attendees. She asked if they are also considering their fee structures for departments and self-sponsored students to provide for those not staying on campus full time.

Mr. McCraw explained that the fees charged to self-sponsored students are conservative and do not cover the costs. No fees are charged to agencies.

Senator Anthon inquired about the attendance policy. **Mr. McCraw** stated that attendance issues are policies rather than rules and are addressed on a case by case basis.

Senator Burgoyne inquired concerning the rationale behind the changes involving the requirement for physical readiness testing for those who are recertifying. **Mr. McCraw** specified that this is a physical readiness test for basic training, and those recertifying do not attend basic training. The agencies decide if they are fit for duty or not.

Mr. McCraw continued with the changes about certain disclosures by applicants regarding decertification, investigation or proceeding from any other jurisdiction, and the result thereof.

Senator Lee requested clarification relating to the agencies making the decision as to physical fitness and asked if POST has no input into this evaluation. **Mr. McCraw** specified that the general fitness of the candidate is a concern of POST, but the main concern is focused on skills development.

**PASSED THE
GAVEL:**

Vice Chairman Nonini passed the gavel back to the Chairman.

Chairman Lodge scheduled the remaining agenda items, further testimony and a vote on Docket No. 11-1101-1501 and presentation of Docket No. 11-1104-1501, to be heard on Friday, January 22.

ADJOURNED:

Chairman Lodge adjourned the meeting at 3:00 p.m.

Senator Lodge
Chair

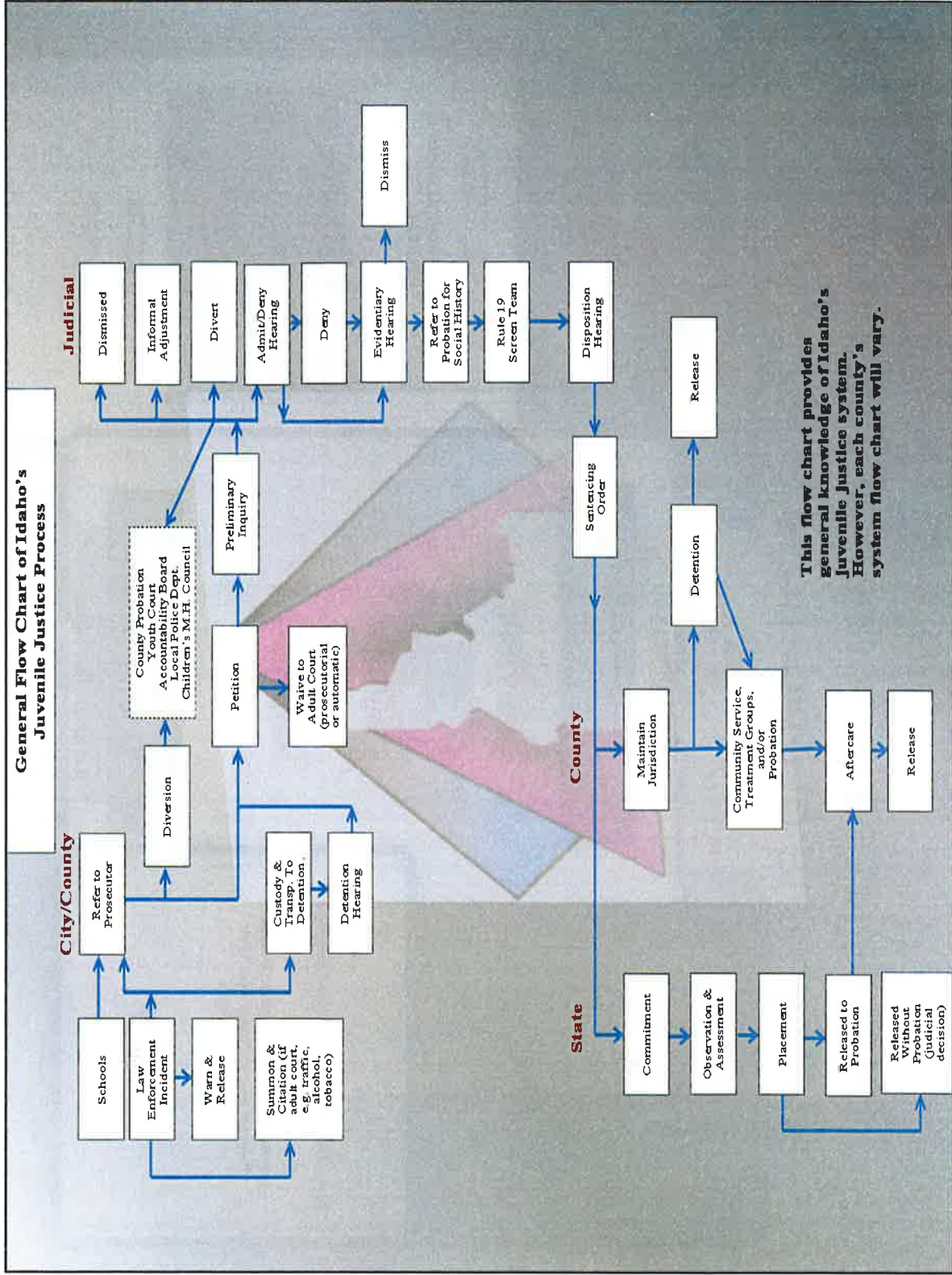
Carol Cornwall
Secretary

Idaho Department of Juvenile Corrections

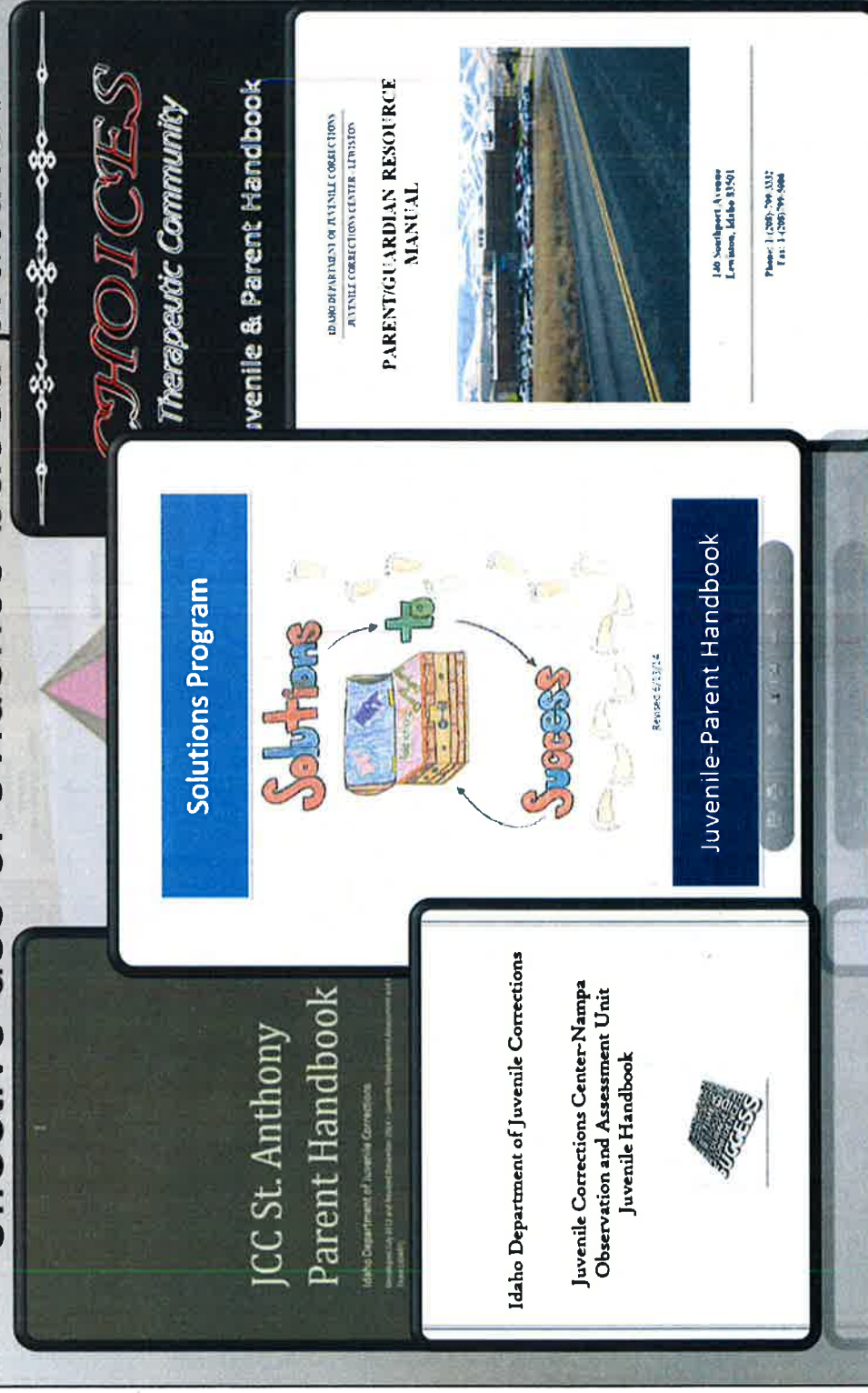
Senate Judiciary and Rules
Committee

Sharon Harrigfeld, Director
January 20, 2016

*Developing productive citizens in partnership with communities,
through juvenile crime prevention, education, rehabilitation and
reintegration*



Ensure juvenile accountability through effective use of evidence-based practices

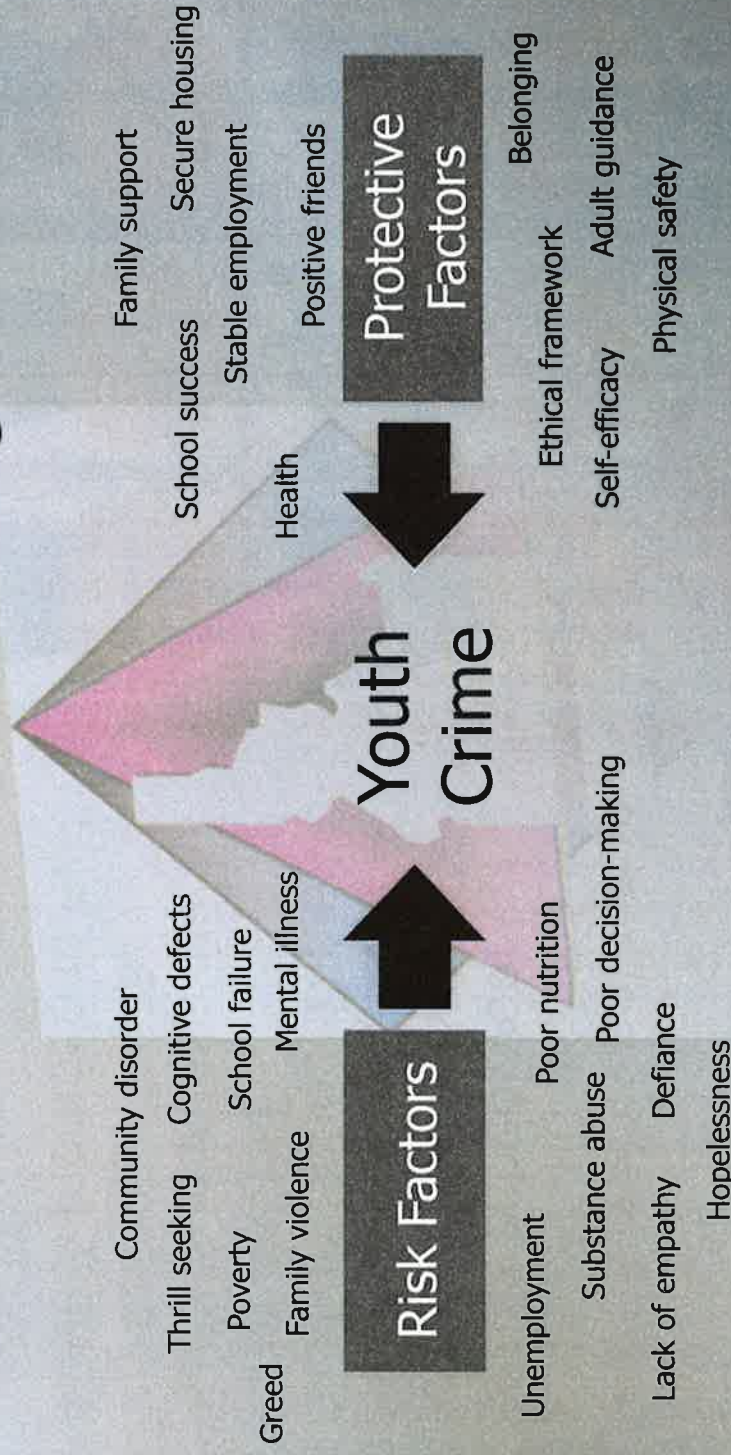




Ensure community protection through skills improvement of juveniles returning to the community



Risks and Strengths

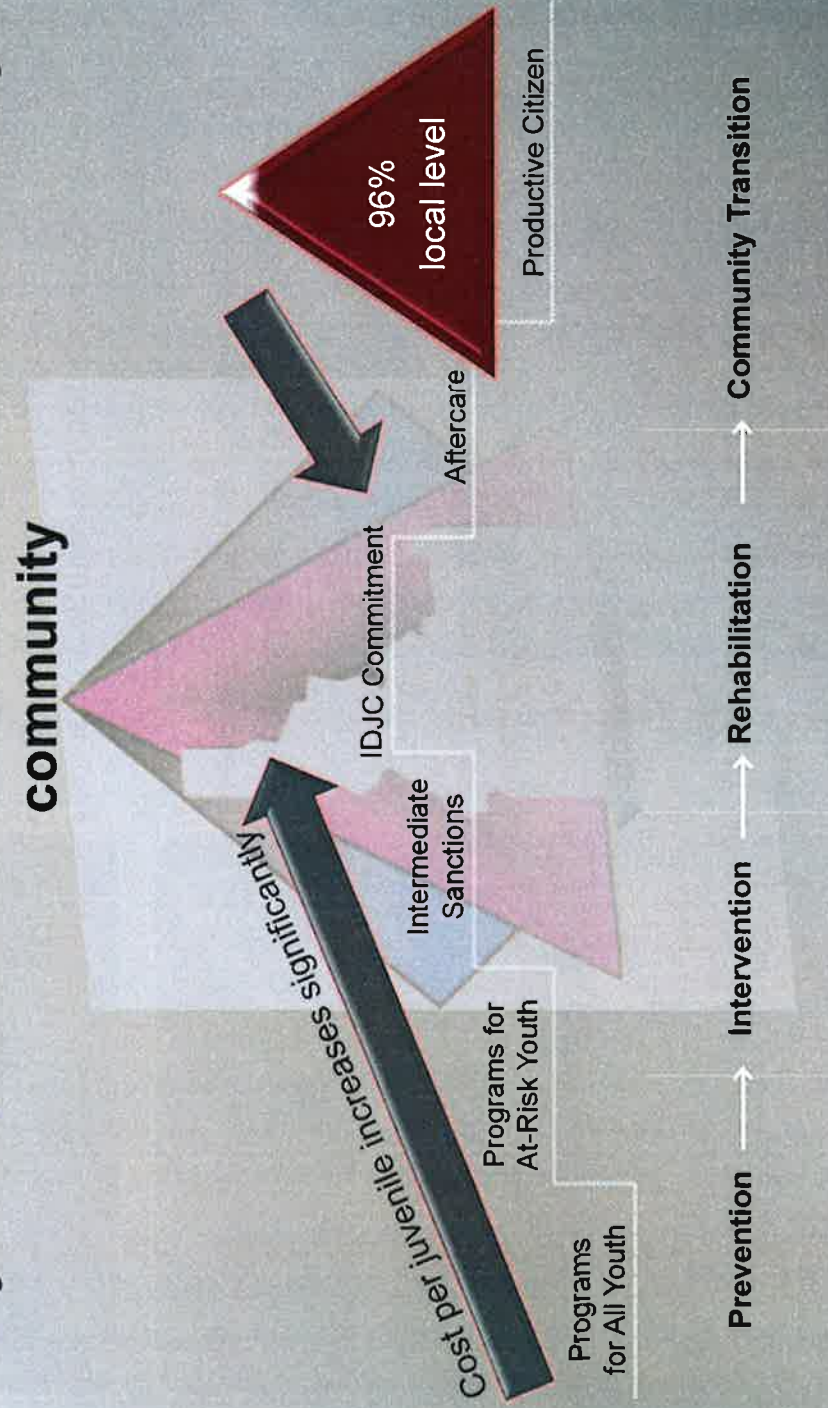


Positive Youth Outcomes

- 795 credits earned in the first 6 months of this school year
- 47% of eligible juveniles received a High School Diploma or a GED
- 83% increase in reading scores
- 90% increase in math scores
- 82,291 hours of community service



Develop a well-structured system that addresses the needs of juvenile offenders, their families, and the safety of community



Pathways to Dual Involvement

Pathway 1

- Youth has an open child welfare case and gets a subsequent delinquency charge

Pathway 2

- Youth has a previous, but not current, child welfare case at time of delinquency

Pathway 3

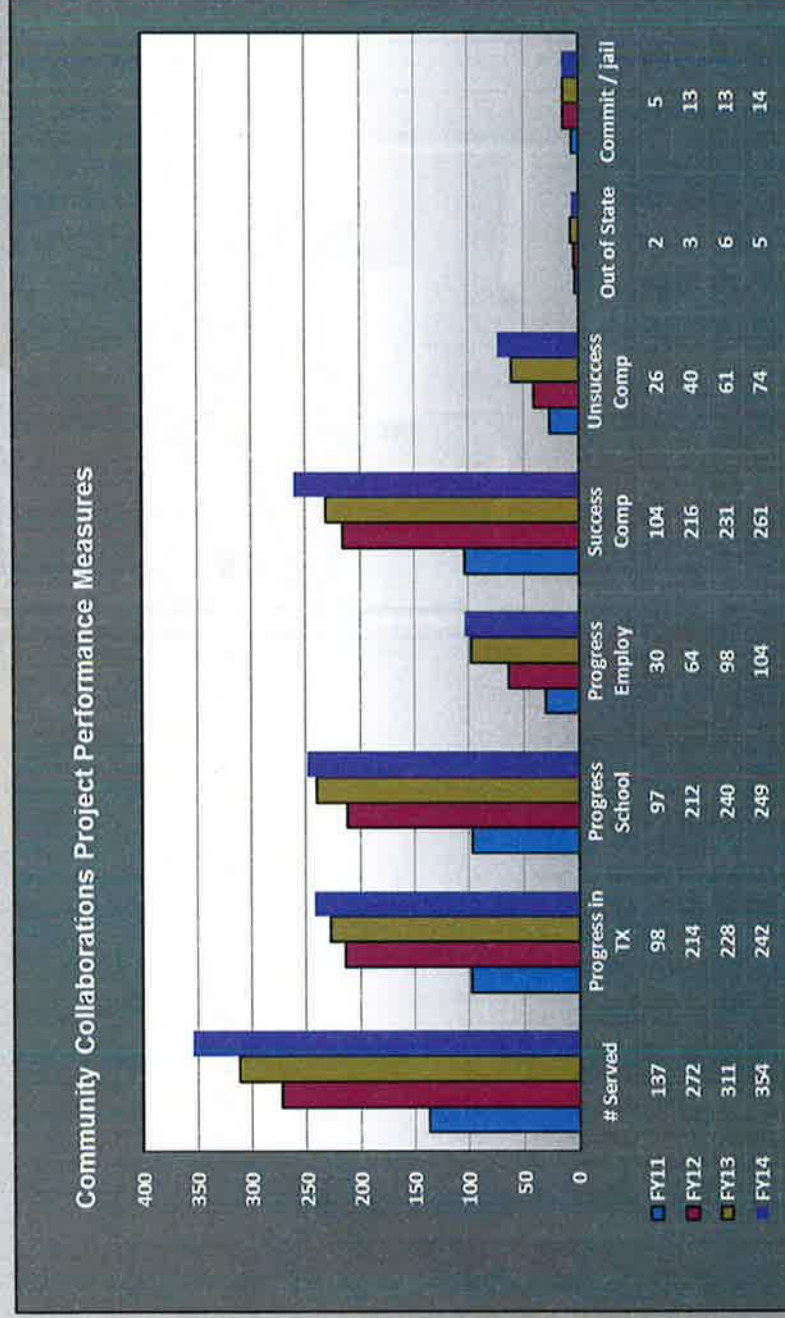
- Youth does not have a previous or current child welfare case, but juvenile justice investigation after arrest or upon release from custody

Training

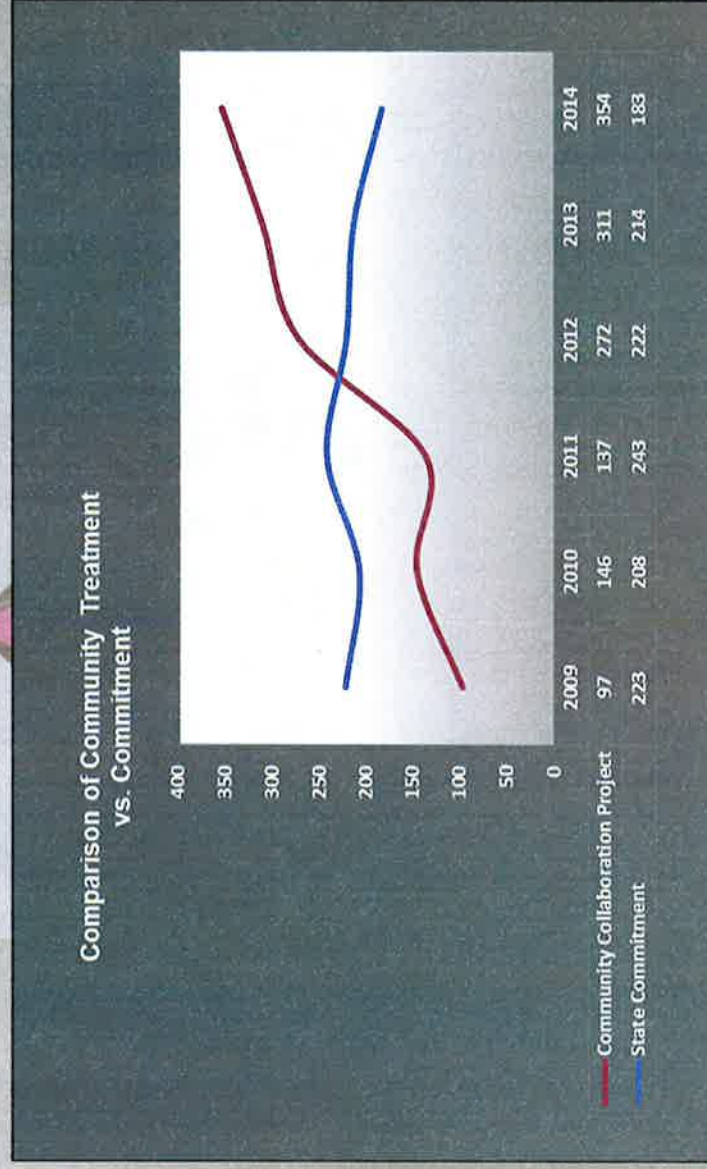
- POST Academies
- IJJA
- ICADD
- Detention Clinician Training



Performance Measures

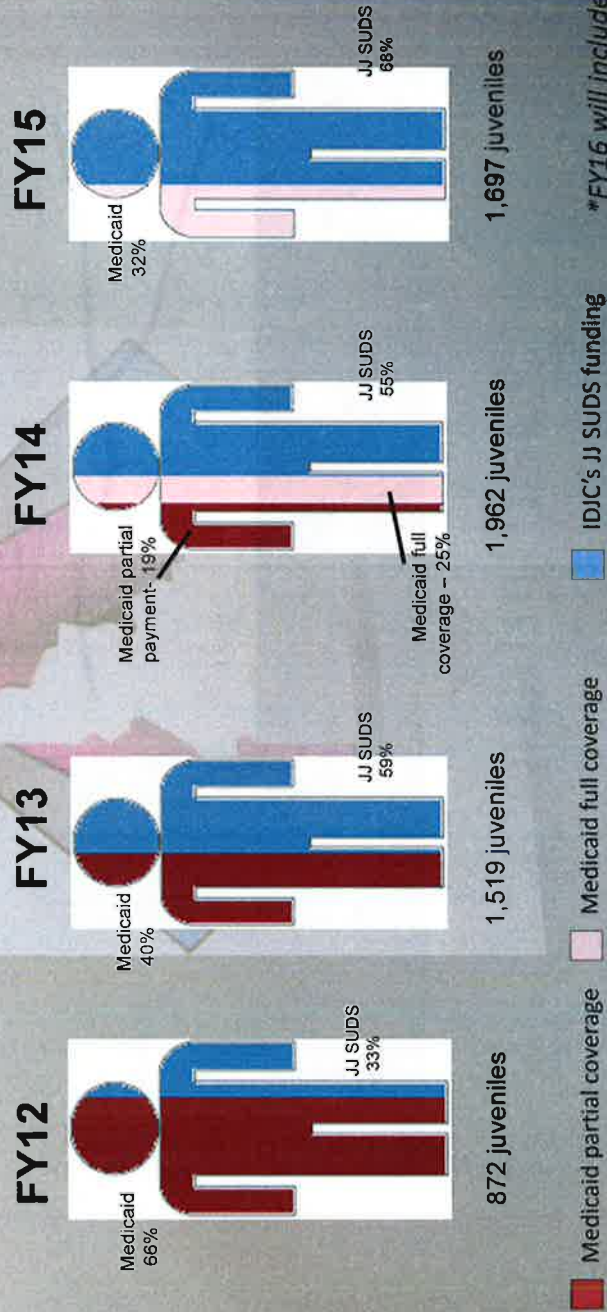


Community Treatment vs. Commitment



Juvenile Justice Substance Use Disorder System

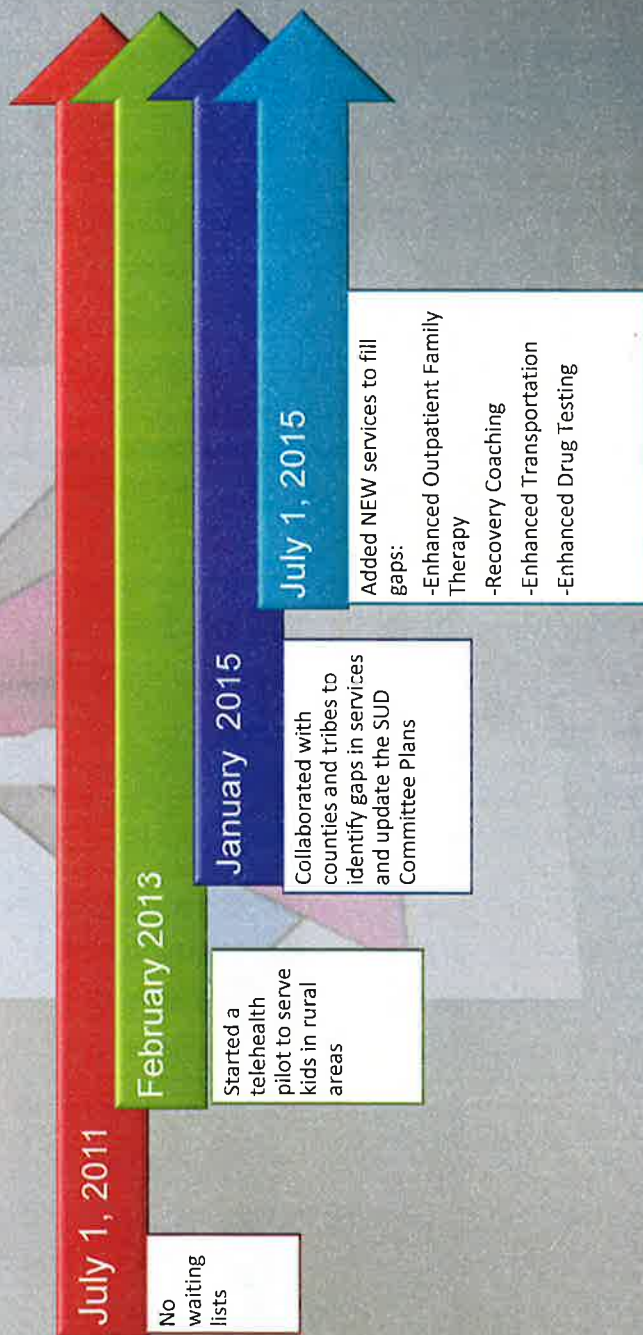
Changes in how juveniles are funded throughout the years



*FY16 will include partial payments from private insurance coverage.

Filling the Gaps in Community-based SUD Treatment

IDJC has collaborated with stakeholders along the way to identify gaps and needs and respond to build an effective youth-focused treatment system.



Strengthen and support all resources within IDJC



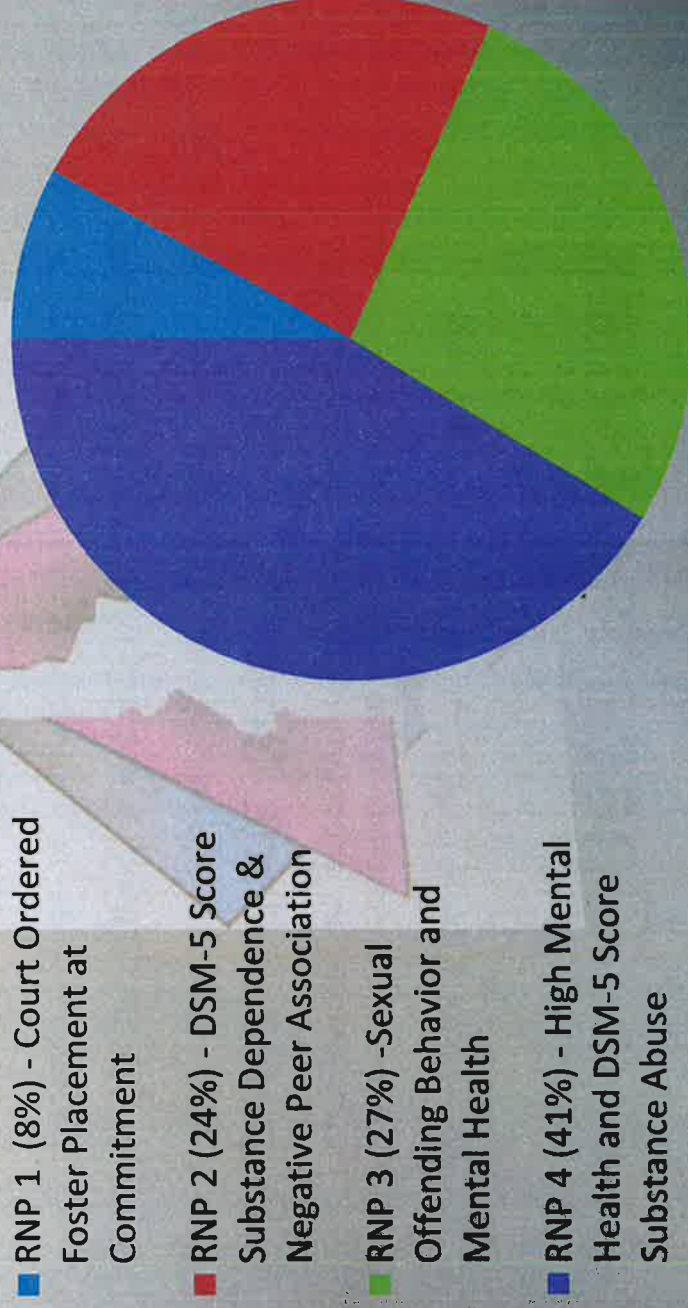
Cascaded Goals

-
- **Director: Mission**
 - “Developing productive citizens in partnership with communities, through juvenile crime prevention, education, rehabilitation and reintegration”
 - **Superintendent: Goal**
 - “Ensure juvenile accountability through effective use of evidenced-based practices”
 - **Unit Manager: Objective; Action Step**
 - “Increase Number of Successful Program Completions”; “Ensure program fidelity”
 - **Rehabilitation Specialist: Objective; Action Step**
 - “Increase Number of Successful Program Completions”; “Coordinate individual strategies in conjunction with SIP goals and treatment team”
 - **Rehab Technician: Objective; Action Step**
 - “Increase Number of Successful Program Completions”; “Read and create daily log observations of group and individual juvenile strategies”

Risk Need Profiles

(Commitments from 2009-2014)

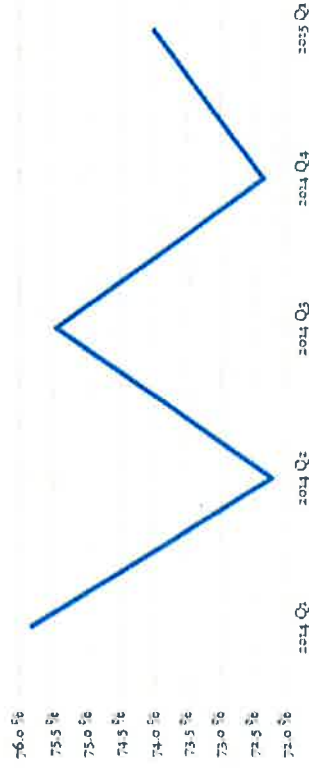
Male Risk Need Profiles



Outcome Measures for Strategic Plan

Staffings with Family Participating

Percent of Family Participating by Quarter



Expanded Filtering

Filters

VIEW

FacilityName (All)

FacilitySecurityLevel (All)

FacilityType (All)

Gender (All)

Race (All)

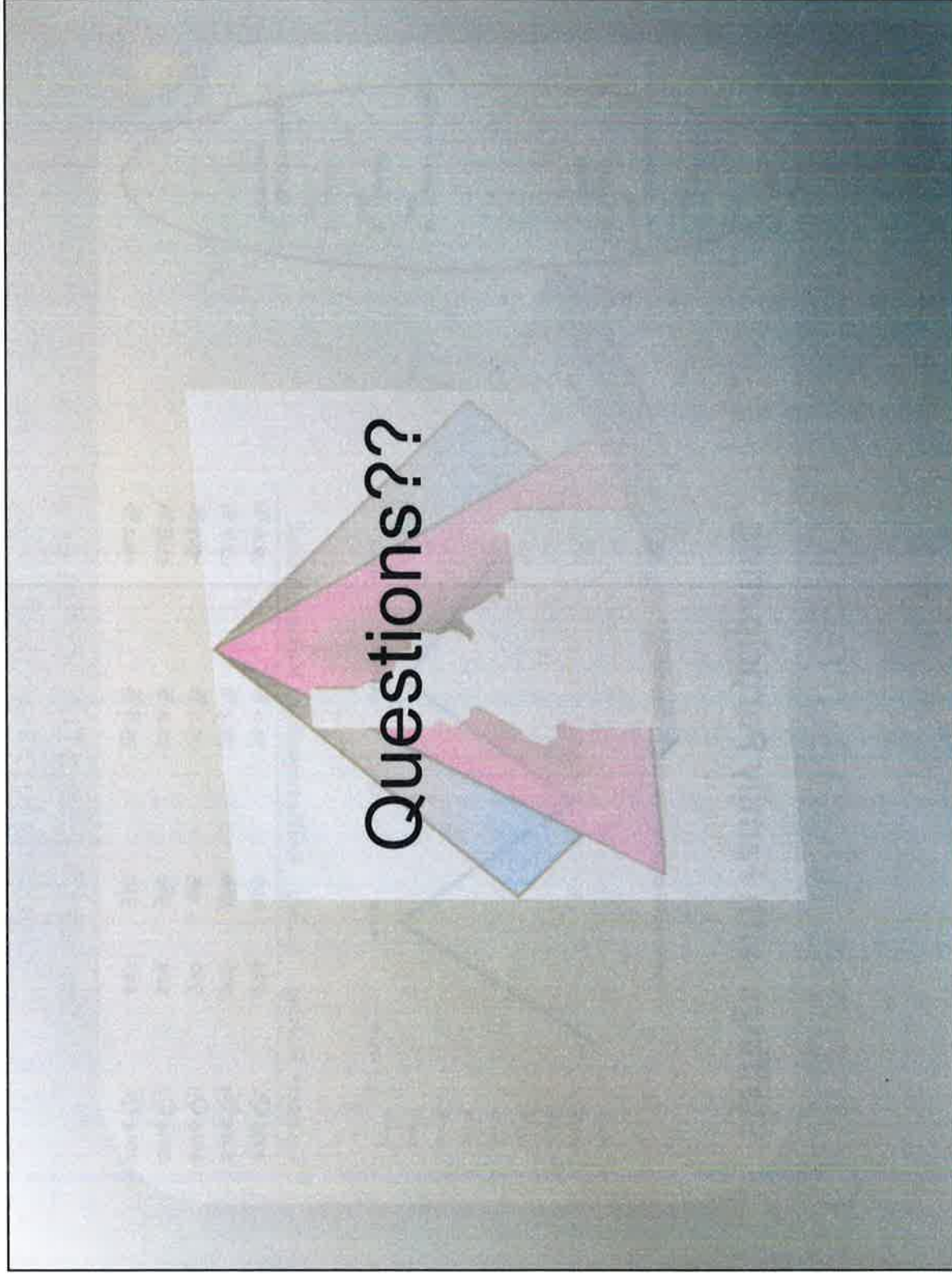
YearOfStaffing is 2015 of 2014

Quarter ▾ Staffings Family %ofParticipating VarianceToGoal.

Quarter	Staffings	Family	%ofParticipating	VarianceToGoal.
2015 Q1	404	299	74.0 %	-11.0 %
2014 Q4	506	366	72.3 %	-12.7 %
2014 Q3	550	415	75.5 %	-9.5 %
2014 Q2	529	382	72.2 %	-12.8 %
2014 Q1	447	339	75.8 %	-9.2 %

The enhanced Director's Dashboard provides IDJC staff with instant access to critical performance information

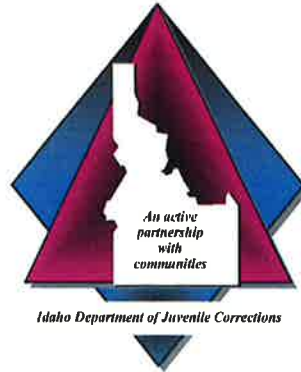




Idaho Department of Juvenile Corrections

Mission Statement

Developing productive citizens in partnership with communities, through juvenile crime prevention, education, rehabilitation and reintegration.



Values

Balanced and Restorative Justice

Help juveniles become responsible citizens by developing life skills and holding them accountable for restoring their victims and communities while ensuring public safety.

Effective Partnerships

We acknowledge our vital role in communities and with other state agencies and branches of government. And we seek to understand and promote a unified relationship among all parties to prevent juveniles from breaking the law.

Communication

We are committed to full-circle communication in our activities.

Teamwork

We recognize that the power of combined efforts exceed what can be accomplished individually.

Respect

We treat juveniles, families, victims and one another with respect, and in so doing, demonstrate honesty, integrity, trust and ethical behaviors.

Excellence and Quality

We are committed to deliver excellence and quality in every aspect of our work by establishing goals and monitoring outcomes, and holding ourselves accountable. We value new ideas and plans which are evidence-based and results oriented.

Employee Optimization

We value our staff and are dedicated to providing training which will develop leaders and maintain qualified, competent employees.

Diversity

We are committed to fostering an inclusive environment where the individual differences among staff, juveniles and families are understood, respected and appreciated.

Effective Stewardship

We believe in promoting responsible government by the prudent management of resources to maximize efficiency and effectiveness.



Idaho Juvenile Justice System

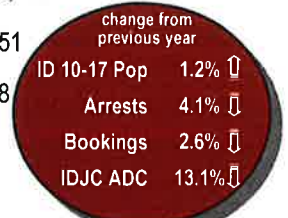
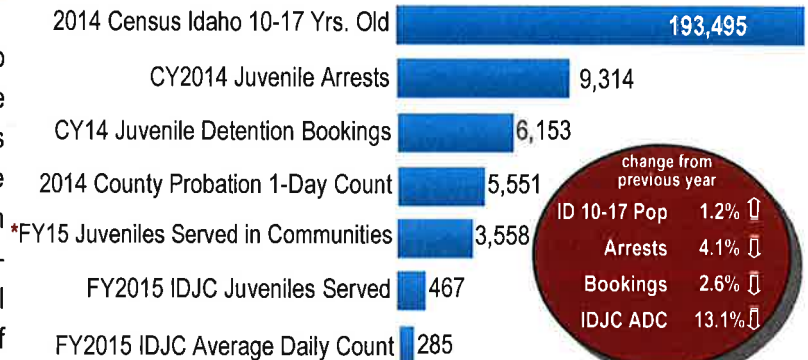
THE STRENGTH OF COLLABORATION

In the past twenty years, there have been significant steps to strengthen collaboration and coordination in Idaho's juvenile justice system under Idaho's Juvenile Corrections Act. The success of this collaboration is most apparent in the numbers we have seen. As the 10- to 17-year-old population increases, there has been a decline in arrests, bookings, and commitments to state custody. This is tangible evidence of the ongoing efforts to take a strong developmental approach to juvenile justice through increased understanding of adolescent development and building services in communities.

Those community services begin with diversion. The Office of Performance Evaluations described diversion in Idaho as inconsistent across the state in 2014. The common goal among diversion programs in Idaho is to minimize low-risk youth's involvement in the juvenile justice system. Collaboration to strengthen the diversion system to provide more consistency has included participation from judges, prosecuting attorneys, and juvenile justice administrators.

Effective community-based mental health and substance use disorder interventions and treatment are being addressed through continuous partnerships with communities and other state agencies. Department employees are on committees to develop an implementation plan for mental health and each district has a substance use disorder team to determine best practice and direction for those needing treatment. Lastly, there is a statewide reintegration committee effort with community partners in all regions of the state to strengthen reintegration for juveniles returning to their communities.

IDAHO JUVENILE POPULATION



*Juveniles served locally with IDJC state and federal funds (JABG + CIP + MHP + REP + MIL)

Juvenile Correctional Center Average Costs

The total average cost per day [to provide services] at a Level 4 juvenile correctional center is: **\$259.85**

The Department continually addresses ways to reduce lengths of custody while ensuring community protection.

AMOUNT	DESCRIPTION
\$119.16	Program
\$41.56	Educational Services
\$23.51	Security
\$20.02	Food Services
\$19.77	Medical Services
\$16.60	Administration
\$14.93	Maintenance
\$3.00	Laundry/Clothing
\$1.30	Janitorial/Housekeeping

Note: Based on FY15 average costs

POST Academies

State and County Juvenile Justice Professionals

The Department and POST Academy have continued to partner in the training and certification of juvenile justice workers both county and state.

Additional spending authority of juvenile court assessment fees is being requested for POST training to assist with POST academy expenses.

Since the year 2000, 883 county juvenile officers (probation and detention) have been trained and certified. Additionally, since the introduction of POST Academy training and certification for Department direct-care staff in 2008, a total of 264 direct-care staff have been trained and certified. Further, training was held for law enforcement on juvenile procedures in all regions of the state.

DID YOU KNOW? IDJC Demographics 2015

Gender: Male - 84% Female - 16%

Race/Ethnicity: W - 72% H - 22% B - 1% AI - 3% Other - 2%

Average Age: 17.1 years old

Crime: Person - 33% Property - 29% Sex Offense - 29% Other - 9%

Crime Level: Felony - 61% Misdemeanor - 39%

Mental Health Diagnosis: 70%

Substance Use Disorder: 61% (drug and/or alcohol)

Co-occurring Disorders: 41% (substance use disorder and mental health diagnoses)

FY15 Avg. Length of Custody: 19.7 months

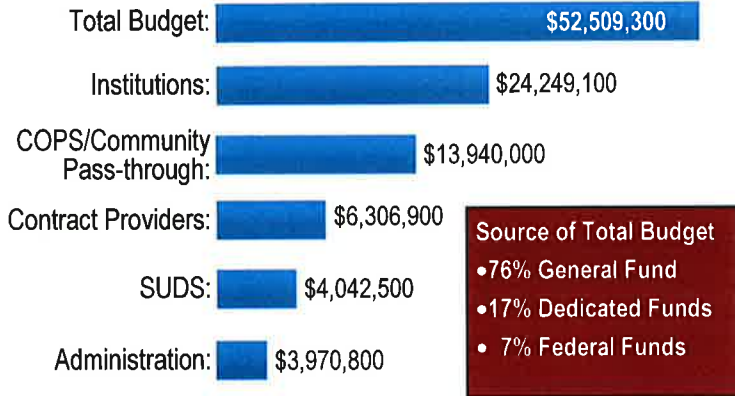
FY15 Recommitment Rate: 14%

FY15 Recidivism Rate: 23%

Families Satisfied With IDJC: 76%
Reading Scores Increased: 83%
Math Scores Increased: 90%



FY15 ORIGINAL APPROPRIATION



Approximately 30% of the Department's budget goes directly to counties and local communities to support effective programming and reintegration initiatives, which results in fewer commitments.

Reduction in Staff Turnover Leads to Better Juvenile Outcomes

"Research indicates that the odds of recidivism are 1.3 times higher for youth that experienced at least two changes in day treatment staff than those who did not."

IDJC employee turnover in the Rehabilitation Technician and Safety and Security Officer job classifications is having an adverse impact on our ability to provide the stability we need to ensure the greatest potential for program success for the juveniles we serve in an environment that is safe and secure. As such, our desire is to implement a Rehabilitation Technician and Safety and Security Officer retention plan that provides predictable wage increases based upon milestones met by staff including POST certification and years in classification.

**Dependent Youth in Juvenile Justice*

Proposed Legislation & Rules

Diversion or Informal Disposition of the Petition—We have worked collaboratively with the Juvenile Justice Advisory Team of Magistrate Judges to clarify and revise sections of the JCA. The clarification references when a Magistrate can place a juvenile on an informal adjustment (IA), and references the dismissal of the informal adjustment and replaces "the court may dismiss" with "shall" dismiss if: (a) juvenile offender has satisfied terms and conditions of IA, (b) court is convinced by the showing made that there is no longer cause for continuing the period of informal adjustment, and (c) it be compatible with the public interest.

Rules Update—We are requesting small changes to our current rules for IDAPA Residential Treatment Provider rules based on feedback gathered during the 2015 legislative session. Changes include clarifying language related to searches and juvenile transportation. In addition, after working with the juvenile Detention Administrators, some clarifications in IDAPA Juvenile Detention Standards will be submitted to the 2016 Legislative Session.

IDJC Community Services

Through the collaboration with the Idaho Juvenile Justice Commission, Idaho remains in compliance with the core requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP). A bill to reauthorize the JJDP was introduced in Congress in the summer of 2015. A grant from the Idaho Millennium Fund was critical in supporting activities to meet the needs of low-risk offenders and support the core requirements of the JJDP. The research is clear that low-risk offenders should be served in the least restrictive manner in order to prevent future offending behavior. In the first year of the Millennium Program, IDJC served 980 youth in 26 community-based programs throughout the state.

In addition to the Millennium Funds, the Department continues to administer state and federal funding for other community-based services. These successful programs require collaboration with local agencies, counties, and courts.

Community Incentive Program: used to address gaps in services for high-risk juveniles; served 165 juveniles with a 97% success rate.

Mental Health Program: used to address gaps in services for high risk juveniles; served 166 juveniles with a 98% success rate.

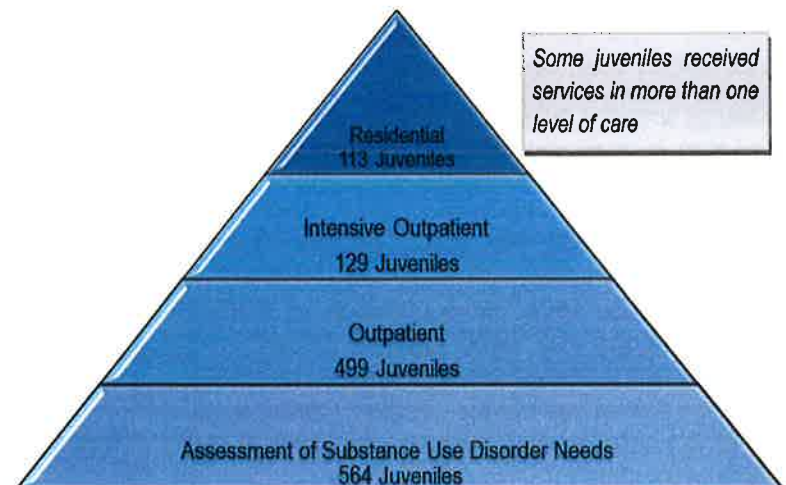
Reintegration Program: used to assist with comprehensive planning to improve reintegration services; served 65 juveniles with a 88% success rate.

JABG Funds: used to hold offenders accountable in communities; served 2,182 juveniles in its last year of funding.

Substance Use Disorder System (SUDS)

SUDS continues to provide an efficient and effective behavioral health system to treat adolescent addiction for juveniles involved in the justice system. In FY15 the SUDS system spent a total of \$2,760,167 for the treatment of 1,046 juveniles throughout the state of Idaho. This locally managed system continues to meet treatment needs in their home communities by receiving immediate access to services. The Department continues to identify gaps in service delivery by expanding treatment and recovery support services. Examples include enhanced family therapy, telehealth-based treatment, and expanded transportation for treatment services. A significant addition to the SUDS system is the Department's collaboration with Idaho Tribes to serve tribal youth on probation in need of substance use treatment.

Juveniles Served and Level of Care (FY15)



AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, January 22, 2016

SUBJECT	DESCRIPTION	PRESENTER
Docket No. 11-1101-1501	Rules of the Idaho Peace Officer Standards and Training Council (Page 34)	Victor McCraw, Administrator, Idaho POST
Docket No. 11-1104-1501	Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers (Page 65)	Victor McCraw, Administrator, Idaho POST

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 22, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Anthon, Burgoyne, Jordan

ABSENT/ EXCUSED: Senator Davis

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

Chairman Lodge thanked Mr. McCraw for returning to complete his rules presentation.

Victor McCraw, Administrator, Idaho Peace Officer Standards and Training (POST), in response to Chairman Lodge's request, introduced himself to the Committee. (attachment 1). He explained the make up of the POST Council (Council).

PASSED THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Nonini.

DOCKET NO. 11-1101-1501 **Mr. McCraw** addressed a concern previously expressed by Senator Davis regarding the possible rejection of an applicant. **Mr. McCraw** reminded the Committee that he could not reject any applicant for peace officer certification. If he does not approve the applicant, that application is referred to the Council for the final decision. He expressed the deep trust he felt for his staff.

Mr. McCraw identified the reasons for making the changes in this rule (attachment 1, pages 3 and 4). He also explained the changes that have been made in the recertification process (attachment 1, page 5). The changes address the requirements for POST course credit, suspension of instructor certification, status for non-certified instructors, reduction of paperwork, elimination of the requirement for recertification in non-high liability courses and requirements for instructors of high-liability content.

Senator Jordan asked Mr. McCraw if attention has been given to technologically dependent areas of training in high-liability areas. **Mr. McCraw** acknowledged that there have been many advancements in technology in law enforcement. High-liability areas include actions that will negatively affect public safety if the officers are not proficient in the technological advancements. Emergency vehicle operations, electronic control devices and firearms are some of the areas that have seen technological changes. Instructors are required to keep resumes and be able to support their basis for certification.

Senator Lee expressed concerns about the changes in the physical fitness assessment. Other agencies have relied on POST to cover the physical fitness standard. **Mr. McCraw** explained that POST's attention to physical fitness has been focused on a candidate being able to meet the requirements for the basic training academy without injury. The standard of physical fitness for the academy was not meant to necessarily carry over into the field. Physical requirements vary among the different types of duties, making it necessary for the agencies to train their people based on the needs of that agency. **Senator Lee** asked if the agencies are aware of these changes. **Mr. McCraw** affirmed that they are aware. The Council deliberated concerning this issue and concluded that because officers who come for recertification will not do the basic training, they will not have to do the physical fitness assessment.

Senator Burgoyne referred to the deletion of a rule regarding determination of high liability. He inquired if that will be codified elsewhere. **Mr.** related that it will be codified. The method of making that determination has been changed, but high liability will still be determined for both POST instructors and third-party instructors. **Senator Burgoyne** stated that he is still unclear regarding the determination of risk to the trainees. He questioned why, if there is actual risk to the trainees, there is not the same level of detail regarding the actions needed to keep the trainees safe. **Mr. McCraw** replied that the detail is limited because they require a POST-certified instructor to conduct the training. These instructors are thoroughly trained in their specific areas. Previously, a third-party instructor would be supervised by a POST instructor, but the level of expertise of that POST instructor was not as great as it is under the new rule. He detailed the procedure for a training exercise with high-risk equipment and procedures.

Chairman Lodge inquired what the cost is for an individual to self sponsor. **Mr. McCraw** answered that the only discipline that accepts self-sponsored individuals is patrol. The cost to the individual is approximately \$4,800. Actual cost is about \$10,000. If they leave the profession within two years, they are required to pay back the remaining cost of the training.

MOTION:

Senator Souza moved to approve **Docket No. 11-1101-1501**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
11-1104-1501**

Mr. McCraw listed the reasons for the changes in this rule:

- to bring POST into compliance with the FBI's criminal fingerprint restrictions;
- to clarify the certification qualifications requiring disclosure of previous decertification; and
- to eliminate the need for physical readiness/agility testing (attachment 1, page 5).

Mr. McCraw pointed out that the firearms qualifications course for corrections officers is added to this rule at the Idaho Department of Corrections' (IDOC) request because corrections officers are sometimes required to carry weapons. He explained that under the old rules these officers did not have firearm training, and this addition to the rules will ensure that an individual certified under the old curriculum, who then left the profession, will need to be trained in firearms use upon return. **Mr. McCraw** explained that recertification procedures apply to certified adult probation or parole officers who come from other states.

Senator Anthon asked if POST recognizes any circumstance under which an individual can be certified if he/she has been decertified in the past. **Mr. McCraw** reiterated that as Division Administrator he assesses all the applications, but he cannot reject any application. That decision goes to the council, where both the head of the agency wanting to hire the applicant and the applicant, have the opportunity to support the application.

MOTION: **Senator Lee** moved to approve **Docket No. 11-1104-1501**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nonini passed the gavel back to Chairman Lodge.

Chairman Lodge again thanked Mr. McCraw for coming back to present the rules change.

INTRODUCTION: **Chairman Lodge** introduced Senator Davis' intern, Beck Roan, who expressed his gratitude to work with Senator Davis.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 2:27 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary



Victor McCraw: Idaho POST Division Administrator

Victor McCraw is a career public safety professional and criminal justice trainer, and served the Arizona Department of Public Safety (DPS) for over 28 years. He retired at the rank of Captain in November 2014 to accept his current position after serving as the Executive Officer of the Arizona Law Enforcement Academy for the previous five years.

In addition to his vast law enforcement training experience, McCraw served as an Arizona Highway Patrol District Commander in the metro Phoenix area, as the Arizona DPS Operational Training Section Commander and as an Air Rescue Helicopter Paramedic Sergeant. His special duty assignments have included Tactical Negotiator, SWAT Medic, Major Events Security Commander and Senior NFL Public Safety Official for the Arizona Cardinals.

Vic is a graduate of the IACP Leadership in Police Organizations course, and the 249th Session of the FBI National Academy. He is a member of the Idaho Peace Officer Memorial Board of Directors and the Idaho Medal of Honor Commission. Vic remains active in speaking, teaching and consulting on and off-duty.



IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

Jan Bennetts, Prosecutor Ada County	Sharon Harrigfeld, Director Idaho Department of Juvenile Corrections	Paul Panther, Chief Criminal Law Division, Office of the Attorney General
Daniel Chadwick, Executive Director Idaho Association of Counties	Doug Hart, SSRA Federal Bureau of Investigation	Ralph Powell, Director Idaho State Police
Kevin J. Fuhr, Chief (Chairman) Rathdrum Police Department	Kevin Kempf, Director Idaho Department of Correction	Wayne Rausch, Sheriff (Vice Chairman) Latah County
Shaun Gough, Sheriff Gooding County	Jeffrey A. Lavey, Chief Meridian Police Department	Shane Turman, Chief Rexburg Police Department
Seth Grigg, Executive Director Association of Idaho Cities	Lorin Nielsen, Sheriff Bannock County	Greg Wooten, Enforcement Chief Idaho Department of Fish & Game



IDAHO PEACE OFFICER STANDARDS AND TRAINING STAFF



NOVEMBER 2015

DOCKET NO. 11-1101-1501

- ☐ Brings POST in compliance with the FBI's criminal fingerprint check restrictions related to law enforcement agencies and the administration of justice
- ☐ Clarifies the certification qualifications regarding past misdemeanor convictions and past decertifications
- ☐ Removes language prohibiting POST from considering misdemeanor convictions related to crimes against children and vulnerable adults
- ☐ Eliminates the need for Physical Readiness/Agility Testing for recertification and certification challenge candidates
- ☐ Eliminates the requirement for students to live on campus during academy sessions
- ☐ Improves processes and standards related to POST Certified Instructors and credit

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☐ 03.g (stricken)

- ☐ Allows the consideration of convictions of violations of Title 18 Chapter 15 of the Idaho Code (or comparable statutes from elsewhere) to be considered when making peace officer certifications.

TITLE 18 CHAPTER 15 CHILDREN AND VULNERABLE ADULTS

18-1501 INJURY TO CHILDREN.
 18-1502 BEER, WINE OR OTHER ALCOHOL AGE VIOLATIONS -- FINES.
 18-1502B POSSESSION OF INHALANTS BY MINORS.
 18-1502C POSSESSION OF MARIJUANA OR DRUG PARAPHERNALIA BY A MINOR -- USE OF CONTROLLED SUBSTANCES -- FINES.
 18-1505 ABUSE, EXPLOITATION OR NEGLECT OF A VULNERABLE ADULT.
 18-1505A ABANDONING A VULNERABLE ADULT.
 18-1505B SEXUAL ABUSE AND EXPLOITATION OF A VULNERABLE ADULT.
 18-1506 SEXUAL ABUSE OF A CHILD UNDER THE AGE OF SIXTEEN YEARS.
 18-1506A RITUALIZED ABUSE OF A CHILD -- EXCLUSIONS -- PENALTIES -- DEFINITION.
 18-1507 DEFINITIONS -- SEXUAL EXPLOITATION OF A CHILD -- PENALTIES.
 18-1508 LEWD CONDUCT WITH MINOR CHILD UNDER SIXTEEN.
 18-1508A SEXUAL BATTERY OF A MINOR CHILD SIXTEEN OR SEVENTEEN YEARS OF AGE -- PENALTY.
 18-1509 ENTICING OF CHILDREN.
 18-1509A ENTICING A CHILD THROUGH USE OF THE INTERNET OR OTHER COMMUNICATION DEVICE -- PENALTIES -- JURISDICTION.
 18-1510 PROVIDING SHELTER TO RUNAWAY CHILDREN.
 18-1511 SALE OR BARTER OF CHILD FOR ADOPTION OR OTHER PURPOSE PENALIZED -- ALLOWED EXPENSES.
 18-1512 MEDICAL BILLS PAYMENT FOR CHILD TO BE ADOPTED OR MOTHER AN EXCEPTION.
 18-1512A ADVERTISING FOR ADOPTION -- PROHIBITED ACTS.
 18-1513 OBSCENE MATERIALS -- DISSEMINATION TO MINORS -- POLICY.
 18-1514 OBSCENE MATERIALS -- DEFINITIONS.
 18-1515 DISSEMINATING MATERIAL HARMFUL TO MINORS -- DEFINED -- PENALTY.
 18-1516 MISREPRESENTATIONS -- PARENTHOOD OR AGE -- MISDEMEANOR.
 18-1517 DISSEMINATING MATERIAL HARMFUL TO MINORS -- DEFENSES.
 18-1517A HIRING, EMPLOYING, ETC., MINOR TO ENGAGE IN CERTAIN ACTS -- PENALTY.
 18-1518 TIE-IN SALES OF PROHIBITED MATERIALS -- MISDEMEANOR.
 18-1519 EACH PROHIBITED ITEM DISSEMINATED CONSTITUTES SEPARATE OFFENSE.
 18-1520 DISTRICT COURTS -- INJUNCTIONS -- TRIAL -- ORDERS OF INJUNCTION.
 18-1521 UNIFORM ENFORCEMENT -- ABROGATION OF EXISTING ORDINANCES -- FURTHER LOCAL ORDINANCES BANNED.
 18-1522 UNAUTHORIZED SCHOOL BUS ENTRY -- NOTICE.
 18-1523 MINORS -- TATTOOING, BRANDING, TANNING DEVICES AND BODY PIERCING.

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071.01-04 (stricken) Closed Campus and Attendance

Students will report promptly for duty at the designated time and location. Tardiness will not be tolerated. Students will not leave academy grounds or other assigned duty posts without permission from the training staff. Leaving the academy grounds without proper authorization will result in the student being absent from duty and may lead to immediate dismissal from the academy.

Students are required to complete all academy objectives, classes and course material in order to graduate from the academy. A student may not be absent from more than 16 hours of academy instruction. All missed instructional time must be made up by the student. If the student misses skills based training (e.g. Defensive Tactics, EVOC, Firearms, Scenarios, etc.) it is the responsibility of the student's agency to ensure that the student receives the missed training as approved by POST.

pages 53-64

11.11.01 251 - 311

POST CERTIFIED INSTRUCTOR CHANGES

- ☐ POST Currently processes several hundreds of annual instructor-related "certification" requests. Instructors are spending hours on submittals, and POST is spending additional hours on logging, scanning, verification, approval and notification for each request. This process includes next to no quality control, and absolutely no agency or instructor support to improve training.
- ☐ The purpose of the rule change proposal is to decrease the amount of "red tape" while maintaining standards and increasing the amount of support offered by POST to improve training.

pages 53-64

11-1101-251 - 311 POST CERTIFIED INSTRUCTOR CHANGES

Highlights

- Issues POST Training Credit only for courses taught by at least one certified or approved instructor
- Adds a provision for non-punitive **suspension** of instructor certification for significant or repeated deviations from POST training standards
- Eliminates "exemptions" and institutes an "approved" status for non-certified instructors
- Reduces the instructor application document requirements
- Eliminates the requirement for recertification as an instructor for each and every non-high liability topic or lesson plan taught
- Maintains and refines the current level of oversight, continuing training and recertification requirements for instructors of **high liability** content
- Establishes the POST Instructor Development course as a "certification" course for instructors

END OF NOTES FOR DOCKET NO. 11-1101-1501

DOCKET NO. 11-1104-1501

- ☐ Brings POST in compliance with the FBI's criminal fingerprint restrictions related law enforcement agencies and the administration of justice
- ☐ Clarifies the certification qualifications regarding disclosure of past decertifications
- ☐ Eliminates the need for Physical Readiness/Agility Testing for recertification and certification challenge candidates (Legality and purpose of testing considered)

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, January 27, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	January 18, 2016	Senator Burgoyne and Senator Souza
Presentation	Introduction to Judicial System	Senior District Judge & Interim Deputy Admin. Director of the Courts Barry Wood
	Felony Sentencing Committee and Justice Reinvestment Initiative Update (SB 1357 - 2014)	Administrative District Judge Lansing Haynes
	Judicial Excellence and Education Program	District Judge Jeff Brudie
	Statewide Drug Court & Mental Health Court Update	District Judge Bradley Ford
	Statewide Veterans Court Update	Administrative District Judge Timothy Hansen
	Twin Falls County Odyssey and E-filing Pilot Project Update	Administrative District Judge Richard Bevan
	Statewide and District Case Flow Management Plans	Administrative District Judge Stephen Dunn
	Update on 6th and 7th Judicial Districts Joanne Wood Court Project and Idaho Falls Crisis Center	Administrative District Judge Darren Simpson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, January 27, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

MINUTES APPROVAL: Minutes of January 18, 2016, were presented for approval. **Senator Souza** moved to approve the January 18, 2016 minutes. **Senator Burgoyne** seconded. Motion passed by **voice vote**.

PRESENTATION: Interim Administrative Director of the Courts **Justice Linda Copple Trout**, in the absence of Senior Judge Barry Wood, introduced the Idaho State District Judges who will give an overview of the duties and responsibilities of the district judges. She pointed out that Idaho has seven judicial districts, each having an administrative district judge and a trial court administrator. She announced that the elected administrative district judge from each district will be addressing the Committee (see attachment 1). She explained that Idaho Court Administrative Rule 42 sets forth the selection process, term and duties of administrative judges. **Justice Trout** emphasized that these judges, in addition to fulfilling the duties of regular district judges, accept the additional responsibilities of administration within their districts including personnel, budget and other issues. These additional responsibilities frequently involve additional travel (see attachment 1, pages 2 and 3). Justice Trout then turned the time over to the administrative district judges.

Administrative District Judge Lansing Haynes, First District Administrative Judge, reported that the Justice Reinvestment Initiative (JRI) has been in effect for three years. He pointed out that JRI has established new ways to deal with probation violators including a matrix of rewards and sanctions that has been established matching assessment of risk with types of violations. The matrix matches the severity of the offense, the risk assessment and the level of the probation violation. He emphasized that the use of the matrix will assist in maintaining consistency around the state in the ways probation violators are managed. **Judge Haynes** reported that funds have been made available for treatment, an essential aspect of returning violators to the community as productive citizens. In addition, the Department of Correction (DOC) has provided significant training for probation officers in how to effectively use the matrix. These officers have seen positive effects in the use of the matrix.

Judge Haynes disclosed another important part of JRI is to reduce caseloads. He emphasized that an effective way to reduce caseloads is to move people off of probation when compatible with public safety. Probationers can apply for reduced supervision if they have done well in meeting the requirements of their probationary program. They may be put on the low-supervision unit or they may even be released from supervision. **Judge Haynes** addressed another aspect of the JRI, the Community Mentor Program, which assists probationers in integrating back into the community. These mentors include individuals, organizations and faith-based systems. They are outside of the justice system.

Judge Haynes then reported that the Felony Sentencing Committee tries to monitor these areas. He explained that persons who do not get probation right away get a sentence called retained jurisdiction, which has programs helping an offender become ready to have probation. The DOC has analyzed their programs and found that some of what they offer works and some does not. They intend to drop the programs that do not work and build on those that help reduce recidivism. **Judge Haynes** pointed out that the DOC has implemented new programs in substance abuse, sex offender assessment and treatment and in anger management. Use of more residential treatment centers in place of a prison treatment center is also being considered.

Judge Jeff Brudie, Second District Administrative Judge, addressed the legislative budget request made in support of the Judicial Excellence and Education Program. When becoming a judge, most of the training takes place after taking the bench. Currently training consists of a couple of multi-day training sessions taught by experienced Idaho judges, and within the first two years judges are required to attend a two-week general jurisdiction program at the University of Nevada Judicial College. Opportunities for continuing education and feedback on the performance of a judge's duties are limited. To assist in assessment and continual improvement a survey program has been established. **Judge Brudie** pointed out that an experienced judge would mentor those needing assistance. The courts are requesting funds this year to support the education program.

Judge Bradley Ford, Third District Administrative Judge, described the establishment of Idaho's drug and mental health courts. The first two of these courts were set up in 1998. In December of 2015 there were 69 problem-solving courts including 27 adult felony drug courts, 11 adult mental health courts, 2 juvenile mental health courts, 5 juvenile drug courts and 6 misdemeanor driving under the influence (DUI) courts. He enumerated the statistics involving each court. **Judge Ford** indicated that the effectiveness of these special courts, both adult and juvenile, has been statistically verified. These courts have returned violators to the community with the capability to become employed, pay off their fines, take care of their families and make positive contributions to their communities, all of which provide indirect tax dollar savings for the State. According to **Judge Ford** there are also direct savings as these courts provide efficient use of tax dollars and other resources. He pointed out that the cost for a felony drug court participant annually is \$3,909, while the cost of incarceration for the same offender annually is \$20,973.

Judge Ford advised that the problem-solving courts follow protocols for program content and practice, implementation and evaluation. He elaborated on the selection of higher-risk/higher-need participants and the results of working with this population. **Judge Ford** emphasized that in addition to the growth in numbers of these courts since 1998, the system has evolved into one with consistent, successful outcomes and will continue to move forward.

Judge Timothy Hansen, Fourth District Administrative Judge, presented information regarding the Idaho Veterans Treatment Court (VTC) (see attachment 2). The VTC is one of Idaho's problem-solving courts. There are VTCs in six counties: Nez Perce, Canyon, Ada, Twin Falls, Bannock and Bonneville. The Standards and Guidelines for the VTC (see attachment 3) were accepted in 2015 and have been adopted nationwide. The Veterans' Administration assists with the treatment of those who are admitted to this court system. The Standards and Guidelines outline circumstances for eligibility; identification and assessment procedures; treatment and treatment provider requirements; case management and supervision procedures including graduation criteria, evaluation criteria and policies concerning partnerships and coordination of services. **Judge Hansen** indicated that although the minimum time required in the program is 12 months, the process takes about 28 months to complete, with post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) victims taking longer to complete the program. He reported statistics showing the number of participants in each district who are currently in and who have completed the program. Most are employed, in school or doing community service. **Judge Hansen** emphasized that veterans who have completed the program have provided a positive impact on the community, but the real value of the program is in the participants' lives.

Judge Richard Bevan, Fifth District Administrative Judge, informed the Committee of progress in the development and use of computer programs that increase efficiency in record keeping and case management (see attachment 1, page 5). The old ISTARs program which dealt with case management, is being replaced by Odyssey, an up-to-date electronic case management system. The time frame for this transition is five years, having been in progress for three years. Odyssey is part of a comprehensive unified system that includes a number of other applications. **Judge Bevan** reported that Twin Falls was the pilot court, and both courts and attorneys there are using the system. Filings are now being done electronically and paper files have been converted. According to Judge Bevan, the switch was challenging but has been a positive one, resulting in much greater efficiency.

Judge Stephen Dunn, Sixth District Administrative Judge, addressed the Committee regarding case flow management. In 2011 a goal was set to evaluate and implement a means by which the Judicial system could be made more efficient and effective. He reported that there had been concerns regarding high costs and that the time factor regarding litigation was too long. In Idaho it is the courts' charge to ensure the just, speedy and inexpensive determination of every action and proceeding. Idaho courts have made substantial progress in providing a means to achieve a system that is fair and efficient. **Judge Dunn** expounded on the three-step process the judges, attorneys and other stakeholders have used to develop this program:

- Implement piloted time standards establishing the amount of time for a case to move through the system.
- Develop case flow management plans.
- Identify rules that need to be changed.

Judge Dunn concluded that these systems are for the judicial "customer" and they are to enable the judicial process to be responsive to the length of time and the cost of various cases. Everyone involved should benefit.

Judge Darren Simpson, Seventh District Administrative Judge, addressed the Wood Court Project, a specialty court adopted by the State of Idaho about eight years ago. There are two in operation, both in southeast Idaho. Wood Court is a problem solving court that deals with individuals having both substance abuse and mental health issues. They are treated in custody in a county jail and then transitioned out into the community. They start out on a work release program through which they find a regular job, and then they are offered assistance in finding housing. **Judge Simpson** shared statistics for the Bonneville County Wood Court, observing that the graduation rate is 52 percent. The Pocatello Wood Court began in January of 2015. Because the program is an 18-month program, there is very little statistical data available.

Judge Dunn also delivered information on the two behavioral health crisis centers currently in operation. One center is in Couer d'Alene and has only been in operation since December of 2015, so there is limited data on that facility. A handout was provided showing statistics involving clients, law enforcement time savings, hospital emergency room savings and inpatient hospitalization savings in the Idaho Falls center (see attachment 4). They operate on a \$1.5 million budget. Individuals' participation in the centers have originated as self-referrals, law enforcement referrals and emergency department referrals. **Judge Dunn** pointed out that some of these people were homeless and some would have gone to an emergency room if the center were not available. The time to get housing or evaluation for other services is much less than going through traditional channels. The average length of stay in the center while necessary services are accessed is 14 hours and 39 minutes. **Judge Dunn** emphasized that the purpose of the crisis centers have been successfully fulfilled.

Senator Souza questioned Judge Bevan about privacy within Odyssey, the new technology system. She asked if the client or offender information would be in the system prior to judgement being passed in a case. **Judge Bevan** replied that the public records law allows access to the information that is public; information that is private under the public records law would not be accessible. The public portal is one of the aspects of the program that still needs more work. At this time there is not access to that information by the public. **Senator Souza** expressed concern about the right to privacy by those not yet convicted. **Judge Bevan** responded that it is an issue still being addressed. The company working on the technology has used it throughout the country and he stated he is confident that protection will be there when the work is completed. He also explained that not yet being convicted does not prevent access to some information if an individual has been charged.

Senator Davis observed that when the federal court went to an electronic system, considerable private information became available. There have been many corrections made to ensure privacy, and Idaho will benefit from those corrections.

Senator Burgoyne referred to Judge Bevan's comments about the increasing costs to resolve civil cases. He surmised that attorneys, lawyers and policy makers need to be aware that legal professions will become more focused on money as the amount of student debt accumulated increases. This is in opposition to what the courts are trying to do to decrease the cost of litigation.

Chairman Lodge thanked the judges for their service and for their presentations.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 2:59 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA

HOUSE, JUDICIARY, RULES & ADMINISTRATION COMMITTEE

1:30 PM

ROOM EW42

Monday, January 25th, 2016

SENATE JUDICIARY & RULES COMMITTEE


1:30 PM

ROOM WW54

Wednesday, January 27th, 2016


SUBJECT	DESCRIPTION	PRESENTER
	Introduction to Judicial System	Senior District Judge and Interim Deputy Administrative Director of the Courts Barry Wood
	Felony Sentencing Committee and Justice Reinvestment Initiative Update (SB1357 – 2014)	Administrative District Judge Lansing Haynes
	Judicial Excellence and Education Program	Administrative District Judge Jeff Brudie
	Statewide Drug Court & Mental Health Court Update	Administrative District Judge Bradly Ford
	Statewide Veterans Court Update	Administrative District Judge Timothy Hansen
	Twin Falls County Odyssey and E-filing Pilot Project Update	Administrative District Judge Richard Bevan
	Statewide and District Case Flow Management Plans	Administrative District Judge Stephen Dunn
	Update on 6 th and 7 th Judicial Districts Joanne Wood Court Project and Idaho Falls Crisis Center	Administrative District Judge Darren Simpson

Idaho State Judiciary



Presentation by Administrative District Judges to the
HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE
Monday, January 25, 2016

SENATE JUDICIARY & RULES COMMITTEE
January 27, 2016



INTEGRITY

FAIRNESS

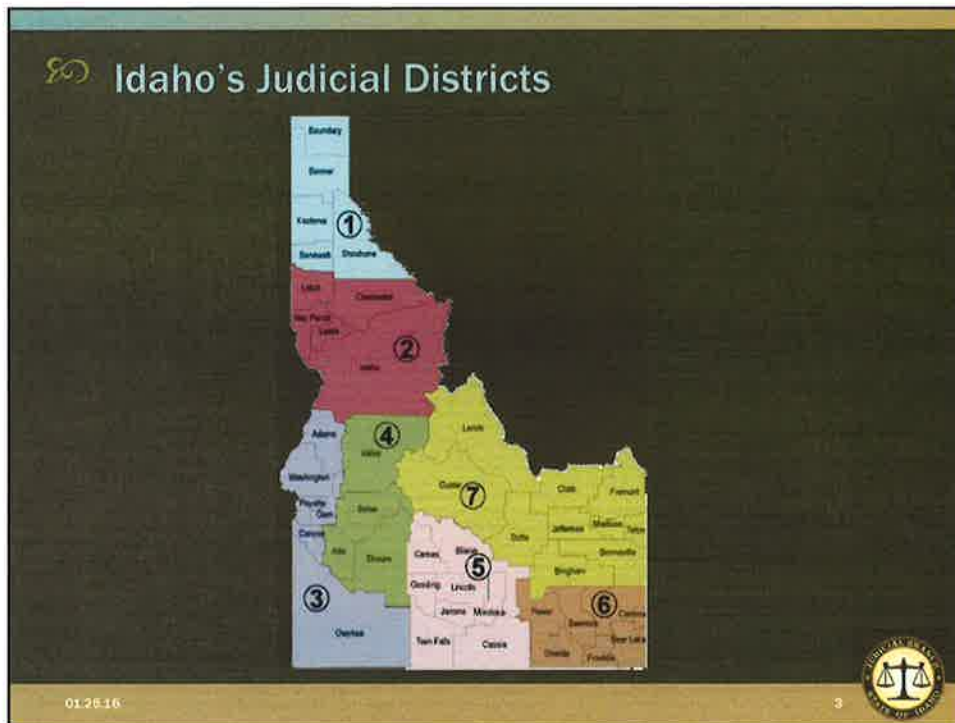
INDEPENDENCE

RESPECT

EXCELLENCE

INNOVATION





Idaho Court Administrative Rule 42. Administrative Judge – Selection, Term and Duties.

- (a) In each judicial district, an administrative judge shall be elected by a majority of the district judges within the district. If a majority of the district judges cannot agree as to who shall be the administrative judge, then an administrative judge shall be appointed by a majority of the justices of the Supreme Court.
- (b) The administrative judge shall be elected or appointed for a term of three years, subject to reelection.
- (c) In the event of a vacancy in the office of administrative judge, a replacement shall be elected by a majority of the district judges within the district to complete the unexpired term. If a majority of the district judges cannot agree as to who shall be elected to complete the unexpired term, then an administrative judge shall be appointed by a majority of the justices of the Supreme Court.
- (d) The administrative judge may be removed by a majority vote of the district judges of the district.
- (e) The actions of the majority of district judges pursuant to the above subsections of this rule shall be subject to disapproval by a majority of the justices of the Supreme Court.
- (f) The powers and duties of the administrative judge include all those powers and duties as established by the Supreme Court.

1-907. ADMINISTRATIVE JUDGE – ADMINISTRATIVE POWERS AND DUTIES.

The administrative judge or acting administrative judge in each judicial district, subject to the rules of the Supreme Court, shall have administrative supervision and authority over the operation of the district courts and magistrates in the district. These powers and duties include, but are not limited to, the following:

- (a) arranging schedules and assigning district judges for sessions of district courts;
- (b) arranging or supervising the calendaring of matters for trial or hearing;
- (c) supervising the clerks of the district courts in the discharge of the clerical functions of the district courts;
- (d) assigning matters to magistrates, and prescribing times and places at which magistrates shall be available for the performance of their duties;

01.25.16

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1-907 continued...

- (e) making arrangements with proper authorities for the drawing of civil jury panels and determining which sessions of the district court shall be jury sessions;
- (f) arranging for the reporting of civil cases by court reporters or other authorized means;
- (g) arranging sessions, to the extent practicable, for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges;
- (h) promulgating a schedule of offenses for which magistrates and clerks of court or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefor;
- (i) assigning magistrates to temporary duty outside the county of their residence, but within the district;
- (j) acting as chairman of the district magistrates commission of the district;
- (k) assigning to other district judges in the district various powers and duties as in this act provided; and
- (l) appointing personnel when needed to attend to the courts, and assigning duties to these court attendants for the purpose of maintaining the security and efficiency of court facilities.

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Chart of Terms for Administrative District Judges

Judicial District	Current / Former Administrative District Judge	Term Expires	Next / New Administrative District Judge	New Term Begins	New Term Expires
1	Judge Haynes	03-31-16	Judge Haynes re-elected	04-01-16	03-31-19
2	Judge Brudie	12-31-17			
3	Judge Ford	01-31-18			
4	Judge Hansen	09-30-18			
5	Judge Bevan	12-31-18			
6	Judge Dunn	08-31-16		09-01-16	08-31-19
7	Judge Simpson	03-31-17			

01.26.16

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Agenda for Today

> First Judicial District

Administrative District Judge Lansing Haynes
 Felony Sentencing Committee & Justice Reinvestment Initiative Update (SB1357, 2014)

> Second Judicial District

Administrative District Judge Jeff Brudie
 Judicial Excellence and Education

> Third Judicial District

Administrative District Judge Bradley Ford
 Statewide Drug Court & Mental Health Court Update

> Fourth Judicial District

Administrative District Judge Timothy Hansen
 Statewide Veterans Court Update

> Fifth Judicial District

Administrative District Judge Richard Bevan
 Twin Falls County Odyssey and E-filing Update

> Sixth Judicial District

Administrative District Judge Stephen Dunn
 Statewide and District Case Flow Management Plans

> Seventh Judicial District


Administrative District Judge Darren Simpson
 Update on 6th and 7th Judicial Districts Joanne Wood Project
 and Idaho Falls Crisis Center

01.26.16

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Transitioning from ISTARs to iCourt



The Idaho Judiciary's New Case Management System

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE
JANUARY 25, 2016

SENATE JUDICIARY & RULES COMMITTEE
JANUARY 27, 2016



IDAHO STATE JUDICIARY

INTEGRITY


FAIRNESS

INDEPENDENCE

RESPECT

EXCELLENCE

INNOVATION



iCourt

Enabling access, efficiency, and integration

Public Users


Court Personnel

Justice Partners

- Case Management
- Supervision
- Judicial Workbench
- Financial Management
- Public Portal Access
- Electronic Payments
- Electronic Filing/Service
- Electronic Document Management
- User-friendly Reporting

House/Senate Jud. Committee 01.25 and 27.16

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Deployment Approach

Pilot Court


- Solution built and implemented
- State baseline established
- Lessons learned

State Rollout

- 4 Go-Live Events
- Ada County
- 3 Regional Waves

House/Senate Jud. Committee 01.25 and 27.16

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Preparing for Pilot County Go-Live

Twin Falls – June 22, 2015

- Transition planning with justice partners
- Court/county staff training
- ISTARS data converted
- Solution implemented
 - Court case management
 - Electronic courtroom
 - Misdemeanor probation
 - Problem-solving court
 - Public portal
 - Electronic payments



House/Senate Jud. Committee 01.25 and 27.16

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Transitioning to iCourt

- Twin Falls County is proud to have served as the pilot court for adoption of the Odyssey system, including the recent addition of e-filing. These solutions are providing the courts, attorneys and the public with better access and more streamlined approaches to the court system – from virtually anywhere. Odyssey is an excellent program, designed with today's electronic world in mind. Once fully integrated it will be a great benefit to the entire state.



House/Senate Jud. Committees 01.26 and 27.16

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Electronic Filing and Service

- **Pilot Firms Kick-off (October)**
 - Early adopters to identify efficient processes & test solution
- **Voluntary Go-Live (November)**
 - 6 additional firms e-filed
- **Mandatory Go-Live (January)**
 - 55 additional firms registered
 - 2,560 filings submitted in first 3 days



House/Senate Jud. Committee 01.26 and 27.16

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Transitioning to e-Filing

"To be able to immediately communicate with the courts and our clients is huge. You are eliminating a three to five day process. It is going to streamline so many things for us."

~ May, Browning & May

"We've worked closely with the courts to improve the system for attorneys all over the state."

~ Worst, Fitzgerald & Stover

"E-Filing has given the judges in Twin Falls County the ability to handle most of our work in a better way - faster with easier attention to detail. We are very happy with it."

~ Judge Richard Bevan

House/Senate Jud. Committee 01.25 and 27.16

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North Idaho Crisis Center



House Judiciary Committee 01.13.16

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East Idaho Crisis Center (outside)



House Judiciary Committee 01.13.15

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East Idaho Crisis Center (lobby)



House Judiciary Committee 01.13.15

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House Judiciary Committee 01.13.16

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**IDAHO ADULT VETERANS TREATMENT COURT
STANDARDS & GUIDELINES FOR
EFFECTIVENESS AND EVALUATION**

Idaho recognizes that veteran treatment courts promote public safety and reduce criminal activity associated with justice involved offenders with substance abuse and mental health disorders and enable them to restore honor, health and to live a productive and law-abiding lifestyle in our community. Nationally, veteran treatment courts utilize a variety of evidence-based practices such as random and frequent drug testing, incentives and sanctions to shape behavior, close and coordinated supervision of offenders, specific substance abuse treatment, mental health and cognitive behavioral treatment and ongoing judicial monitoring. While the major objective of the veteran treatment courts is effective community management and long-term rehabilitation of eligible offenders, community safety is the overarching goal.

Statement of Policy - The Goals of Drug and Veteran Treatment Courts

The Idaho Legislature established the following goals for problem solving courts:

- To reduce the overcrowding of jails and prisons
- To reduce alcohol and drug abuse and dependency among criminal and juvenile offenders
- To hold offenders accountable
- To reduce recidivism, and
- To promote effective interaction and use of resources among the courts, justice system personnel and community agencies.

The Drug Court and Mental Health Court Act requires the Idaho Supreme Court to establish a Drug Court and Mental Health Court Coordinating Committee to develop guidelines addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision and evaluation. It is the intention of the Idaho Supreme Court Drug Court and Mental Health Court Coordinating Committee that Veteran Treatment Court Standards and Guidelines will be useful in:

- assisting Idaho courts in establishing veterans treatment courts that are based on available research-based or widely-accepted best practices
- maintaining consistency of key veteran treatment court operations across the state, and establishing a foundation for valid evaluation of the results and outcomes achieved by Idaho's veteran treatment courts

It is the intention of the Idaho Supreme Court Drug Court and Mental Health Coordinating Committee that treatment standards assure:

- consistent, cost-effective operation
- adherence to legal and evidence-based practices
- effective use of limited public resources, including the human resources of collaborating agencies

Standards / Guidelines Description

The purpose of this document is to set forth both required standards and recommended guidelines to provide a sound and consistent foundation for the operation and the evaluation of Idaho's veteran treatment courts.

These standards and guidelines are not rules of procedure and have no effect of law. They are not the basis of appeal by any veterans treatment court participant and lack of adherence to any standard or guideline is not the basis for withholding any sanction or readmitting a participant who is terminated for any cause.

The standards and guidelines provide a basis for each veterans treatment court to establish written policies and procedures that reflect the standards and guidelines, the needs of participants, and the resources available in the community. The standards and guidelines were developed and refined through input from Idaho veteran treatment court professionals and stakeholders and represent a consensus about appropriate practice guidance.

The *Idaho Drug Court and Mental Health Court Act* states "The district court in each county may establish a drug court which shall include a regimen of graduated sanctions and rewards, substance abuse treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as may be established by the district court, **in accordance with standards developed by the Idaho Supreme Court Drug Court and Mental Health Court Coordinating Committee**".

In addition, the Idaho Drug Court and Mental Health Court Act states: "The Drug Court and Mental Health Court Coordinating committee shall also develop **guidelines for drug courts addressing eligibility, identification and screening, assessment, treatment and treatment providers, case management and supervision, and evaluation**".

These standards and guidelines are organized under these statutory headings. In addition, **Coordination of Services** has been added to encompass guidelines related to the establishment and maintenance of the partnerships, also envisioned in the statute, that are so vital to effective and sustainable mental health courts.

Standards of effectiveness and evaluation will be designated by showing them in **bold font**. Veteran Treatment Courts will be accountable to the Drug Court and Mental Health Court Coordinating Committee and to the Idaho Supreme Court for operating in compliance with the standards.

Guidelines are shown in normal font and are guidance for operations in ways that are consistent with sound practice but for which local courts will have greater latitude in operation to meet local circumstances.

Compliance Policies

The intent of Statewide Guidelines and Standards is to assure that scarce public resources are used in ways that assure the greatest positive return on the investment. Research has now clearly shown that certain operational practices are essential to achieve cost-beneficial outcomes and the

Drug Court and Mental Health Court Coordinating Committee has identified such practices as **Standards of Operation**. Because of the variations in communities and their available resources, it is recognized that achieving total compliance with the Standards must be an ongoing process over a reasonable period of time. However, how a court “measures up” to these practices and makes a good faith effort to achieve full compliance will become the foundation for receiving ongoing state funding.

As always, the Supreme Court is committed to providing the guidance and support to enable all veteran treatment courts to become and remain fully compliant with approved Standards.

Courts that are out of compliance with any approved standard must submit a **plan of improvement** that describes:

- What corrective actions will be taken
- What time line is required to implement the planned actions
- How the court will maintain the improvement and resulting compliance
- Any barriers or resource needs the court must address to implement and maintain compliance

The plan of improvement will be reviewed by the Statewide Coordinator and approved by the Statewide Drug Court and Mental Health Court Coordinating Committee and / or its Executive Committee.

Courts would be granted up to one year to fully implement the plan of improvement and to receive a reassessment. Based on demonstrated efforts, an additional six months could be granted to complete the plan of improvement. In addition, in unusual cases, a court could request a time-limited waiver of a standard for good cause, if it can be shown that a proposed alternative practice is likely to achieve similar positive outcomes.

Remedies for Non-compliance

Courts unable or unwilling to substantially comply with the standards after this period would be subject to a Provisional Termination Notice. Such a notice would require that no new admissions be accepted into the court and that a plan for completion of existing participants be submitted to the Statewide Coordinator.

A Court receiving a Provisional Termination Notice would be allowed an opportunity to present a request for continuance of operations to the Executive Committee of the Statewide Drug Court and Mental Health Court Coordinating Committee and this request could include a new plan of improvement or other proposals that would allow continued operation for a specified period of time.

**ADULT VETERANS TREATMENT COURT
STANDARDS & GUIDELINES
FOR EFFECTIVENESS AND EVALUATION**

Each district court shall establish written policies and procedures that describe how the veterans treatment court(s) will implement these statewide guidelines as well as any additional guidelines, policies, and procedures necessary to govern its operations. Due to the absence of applicable research, each court shall evaluate veterans treatment court applicants for eligibility based upon the totality of their circumstances and with consideration for the benefits of participation to the veteran, the court, and the community. We acknowledge that as more research information becomes available, eligibility criteria may become more stringent and better defined.

Bold = Standards

1.0 ELIGIBILITY

1.1 No person has a right to be admitted into veterans treatment court. [IC 19-5604]

1.2 No person shall be eligible to participate in veterans treatment court if:

The person is currently charged with, or has pled or been found guilty of, a felony in which the person committed or attempted to commit, conspired to commit, or intended to commit a sex offense. [IC 19-5604.b.2]

1.3 Each veterans treatment court shall establish written criteria defining its target population addressing the following considerations:

- A. Veterans Treatment Court is not intended for offenders with low criminogenic risk of recidivism. Veterans Treatment Court is intended for offenders with a moderate-high to high risk of recidivism and high level of criminogenic needs in addition to establishing criteria with assessment tools that address the following: has previously not successfully completed probation, or presents with a documented service related trauma, trauma history, traumatic brain injury, or post-traumatic stress disorder, substance use or mental health disorder.**
- B. Offenders with a felony offense who are at risk of incarceration should be given priority for admission.**
- C. Individuals who are failing to comply with conditions of probation because of substance dependence or addiction and who are being or may be charged with a probation violation, with potential incarceration, should be screened and considered for possible veteran treatment court participation.**
- D. Veterans Treatment Courts may consider persons currently charged with, who have pled or have been adjudicated or found guilty of, a felony crime of violence or a felony crime in which the person used either a firearm or a deadly weapon or**

instrument may be admitted at the discretion of the veterans treatment court team and with the approval of the prosecuting attorney as specified in IC 19-5604, as amended 2011.

- 1.4 Each veterans treatment court shall establish a written procedure for deciding how individuals will be considered for acceptance into veterans treatment court, the criteria for inclusion and exclusion (established in Guideline 1.3), and the establishment of final control for admittance by the presiding veterans treatment court judge.
- 1.5 Each veterans treatment court shall identify eligible individuals quickly, screen them as soon as possible, educate them about the program and the merits of participating, and place them promptly in the veterans treatment court in order to capitalize on a triggering event, such as an arrest or probation violation, which can persuade or compel participants to enter and remain in treatment.

Comment: Research suggests that admitting participants within 50 days of arrest shows improved outcomes and reduced costs.

- 1.6 Coerced treatment is as effective or more effective than voluntary treatment. Participants should not be excluded from admission solely because of prior treatment failures or a current lack of demonstrated motivation for treatment. Veterans Treatment Court should implement motivational enhancement strategies to engage participants and keep them in treatment.
- 1.7 **Payment of fees, fines, and/or restitution is an important part of a participant's treatment, but no one, who is otherwise eligible, should be denied participation solely because of inability to pay.**

Courts must establish a clear, regular payment plan with offenders at intake and work closely with offenders throughout veterans treatment court participation to keep fee payments current as well as to address payment of other court related costs including restitution. Agreed upon payments must be closely monitored throughout all phases of veterans treatment court and collection or necessary fee adjustment must be managed on an ongoing basis.

The practice of allowing large veterans treatment court fee balances to accrue and then deferring graduation until these balances are paid is discouraged because of its impact on veterans treatment court operational costs and the court's ability to admit new participants. Courts should develop procedures for post-graduation collection of unavoidable fee balances, for example filing a civil judgment or other post-graduation collection procedures.

- 1.8 **Veterans treatment court participants shall be responsible for payment of the cost of treatment, based on assessed ability to pay and available resources.**

- 1.9 Cooperation among veterans treatment court is encouraged, within the constraints of available resources, to facilitate transfer of eligible applicants or current participants to the most appropriate problem-solving court approved by the Drug Court and Mental Health Court Coordinating Committee. Such transfers are contingent on meeting the receiving courts' written target population criteria. The receiving court may be transferred jurisdiction in accordance with Idaho Criminal Rule 20.

2.0 IDENTIFICATION AND ASSESSMENT

- 2.1 Prospective veterans treatment court participants shall be identified through a structured screening process designed to determine if they meet the veterans treatment court target population eligibility criteria.
- 2.2 Each veterans treatment court candidate shall undergo a substance abuse assessment [IC 19-5604] prior to acceptance into veterans treatment court. Initial assessment procedures shall include, at a minimum, the Global Appraisal of Individual Needs-Short Screener (GAIN-SS). If it can be obtained on a timely basis, and the candidate meets other eligibility criteria, the full GAIN-Initial (GAIN-I) is preferable.
- 2.3 Each veterans treatment court candidate shall undergo a criminogenic risk assessment. [IC 19-5604] prior to acceptance into veterans treatment court. Such assessment procedure shall include, at a minimum the Level of Services Inventory – Revised (LSI-R) prior to acceptance into veterans treatment court. [IC 19-5604]
- 2.4 Veterans treatment court shall develop procedures to identify participants with varied treatment needs, to refer them to an available treatment provider for evaluation and treatment, and to seek regular input from that provider regarding these participants.
- 2.5 The treatment plan for substance abuse or dependence shall be based on a clinical assessment, performed by a qualified professional, including a GAIN-Interview (GAIN-I) for state funded substance abuse treatment.
- 2.6 Court and treatment personnel will ensure that individuals are suitably matched to appropriate treatment and interventions designed to address their identified criminogenic needs.

3.0 TREATMENT AND TREATMENT PROVIDERS

- 3.1 Treatment paid for by state funds shall be provided in facilities approved by the Idaho Department of Health and Welfare.
- 3.2 Each veterans treatment court shall implement procedures to assure that treatment services are delivered within available financial resources.
- 3.3 Information regarding the specific treatment services delivered is essential for veterans treatment court to effectively manage participation in veterans treatment court.

Communication between treatment providers and veterans treatment court team shall take place on a frequent and regular basis.

- 3.4 Treatment shall address identified, individualized criminogenic needs with the expectation that the treatment program will incorporate, to the extent possible, evidence based practices, delivered with fidelity.
- 3.5 **Group size for group treatment interventions shall not regularly exceed twelve members unless the fidelity of the specific intervention is based on a different number.**
- 3.6 **Treatment shall include the following: A cognitive behavioral model, including interventions designed to address criminal thinking patterns.**
 - A. Techniques to accommodate and address participant stages of change. Members of the veterans treatment court team should work together to engage participants and motivate participation. The consistent use of techniques such as motivational interviewing and motivational enhancement therapy have been found, to reduce client defensiveness, foster engagement, and improve retention.
 - B. **Family education and / or treatment to address patterns of family interaction that increase the risk of re-offending, to develop family understanding of treatment and recovery, in order to foster family participation and create an improved family support system.**
 - C. Referral of family members to appropriate community resources to address other identified service needs.
 - D. **Incorporation of parenting, child support, custody issues, with an emphasis on the needs of children in the participant's family into treatment while addressing these needs through the effective use of community resources.**
 - E. **Frequent, regular clinical/treatment staffings to review treatment goals, progress, and other clinical issues for each participant.**
 - F. **The prompt and systematic reporting to the veterans treatment court team of the participant's behavior, participation and progress in treatment; the participant's achievements; the participant's compliance with the veterans treatment court requirements; and any of the participant's behavior that does not reflect a pro-social lifestyle.**
 - G. **Progressive phases that include the focus and goals described below:**
 - (1) **The focus of Phase 1 is Orientation, Stabilization and Initial Engagement. During this phase participants are expected to demonstrate initial willingness to participate in treatment activities; become compliant with the conditions of**

participation in veterans treatment court; establish an initial therapeutic relationship; and commit to a plan for active treatment.

- (2) The focus of Phase 2 is the provision of Treatment. During this phase participants are expected to demonstrate continued efforts at achieving treatment goals; offender recovery and coping skills, including, relapse prevention; develop an understanding and ability to employ the tools of cognitive restructuring of criminal/risk thinking; develop the use of a recovery support system; and assume or resume socially accepted life roles and behaviors, including education or work and responsible family relations.**
- (3) The focus of Phase 3 is Transition to Community Engagement. During this phase participants are expected to demonstrate competence in using relapse prevention, recovery, and cognitive restructuring skills, in progressively more challenging situations; develop further cognitive skills such as anger management, negotiation, problem- solving and decision making, and financial and time management; connect with other community treatment or rehabilitative services matched to identified criminogenic needs; demonstrate continued use of a community-based support systems; and demonstrate continued effective performance of socially-accepted life roles and behaviors.**
- (4) The focus of Phase 4 is Maintenance of recovery and coping skills. During this phase participants are expected to demonstrate internalized recovery and coping skills with minimal program support; effectively manage medical, psychiatric, and substance use disorder issues, demonstrate ability to identify relapse issues and intervene; contribute to and support the development of others in earlier phases of the veterans treatment court program. Participants are expected to demonstrate and maintain a community support system.**

- 3.7 Treatment Phases 1 / 2 / 3 shall consist of a minimum of nine months in total. Phase 4 shall consist of a minimum of three months.**
- 3.8 Movement through the veterans treatment court phases shall be based on an individual participant's progress and demonstrated competencies associated with each phase and not based on arbitrary timeframes in each phase, other than the minimum timelines specified in section 3.7.
- 3.9 Treatment intensity/phase assignment shall be based on treatment need, and shall not be adjusted as a means of imposing a sanction for non-compliance, unless such non-compliance indicates a clinical need for the change in treatment phase.
- 3.10 Treatment services should be responsive to disabilities, ethnicity, gender, age, and other relevant characteristics of the participant.
- 3.11 Approved treatment medications should be utilized in conjunction with treatment services if there is approved need and resources are available.

- 3.12 The treatment provider shall provide detailed written guidelines describing how it will provide any of the treatment activities that are its responsibility, and the veterans treatment court shall have written guidelines describing how the remaining treatment activities will be implemented.
- 3.13 The veterans treatment court has consistent, reliable treatment providers that participate fully in all court staffings and court sessions.

4.0 CASE MANAGEMENT AND SUPERVISION

- 4.1 Judicial assignment should be made on the basis of interest in the problem-solving court model and should be expected to last for a minimum of three years.**

Comments: Research has demonstrated that frequent rotations or short-term assignments of judges adversely affect outcome.

- 4.2 In Phases 1 and 2 participants shall regularly appear before the judge in court at least twice a month or more frequently if the participant is not in compliance with veterans treatment court requirements.**

Comment: Research shows that participants with a higher criminogenic risk have better outcomes if they appear in court regularly rather than "as needed", based on non-compliance. Both weekly and bi-weekly frequencies of court status hearings have shown positive outcomes.

- 4.3 The frequency of court appearances shall ordinarily decrease as the participant progresses through the phases of treatment. In Phases 3 of veterans treatment court, the client shall appear before the judge in court at least once per month. In Phase 4, court appearances before the judge may be determined by the individual veterans treatment court.

- 4.4 The veterans treatment court team shall include, at a minimum, the judge, prosecutor, defense counsel, probation/community supervision officer, treatment provider, law enforcement representative, mentor coordinator, Veteran Justice Outreach Specialist/Coordinator, and coordinator.** The team may also include other members such as mental health providers, health providers, drug testing personnel, veteran service officer, and vocational services personnel.

- 4.5 Veterans treatment court team members shall meet at least 2 times per month if not every week for veterans treatment court staffings to consider participant acceptance into veterans treatment court, to monitor participant progress, and to discuss sanctions/ rewards and Phase movement or graduation.**

Comment: Optimally, participation in staffings should be in person but communications technology may be utilized (examples: webinar, conference calls, streaming video, and web-cam). While the staffing need not be cancelled in the absence of a team member, every

effort should be made for all veterans treatment court team members to attend all staffings. Consult Idaho Code of Judicial Conduct: Canon 3 (B)(7)

4.6 Staffings shall include the active participation of:

- (a) Judge**
- (b) Coordinator**
- (c) Probation officer**
- (d) Prosecutor**
- (e) Defense Counsel**
- (f) Treatment Provider**
- (g) Law Enforcement Representative**
- (h) Veterans Justice Outreach Specialist/Coordinator**

Comment: Research has clearly demonstrated that the active participation of all team members is directly tied to positive outcome and cost-effectiveness. Staffings may also include the Veterans Service Officer and Veteran Mentor Coordinator based upon availability and appropriateness. The Team Roles and Responsibilities are attached as Appendix B.

4.7 Veterans Treatment Court sessions/hearings shall be conducted on the record and attended by:

- (a) Judge**
- (b) Defense Counsel**
- (c) Prosecutor**
- (d) Coordinator**
- (e) Probation officer**
- (f) Treatment Provider**

Comments: Research has shown that the attendance of all team members shows better outcomes. As with court proceedings, the legal counsel representing the state of Idaho and the counsel representing the participant/defendant is essential. Consult Idaho Court Administrative Rule 27.

4.8 All veterans treatment court team members shall be identified by position or agency in the "consent(s) for disclosure of confidential information", signed by each participant.

4.9 The judge shall serve as the leader of the veterans treatment court team, and shall maintain an active role in the veterans treatment court processes, including veterans treatment court staffing, conducting regular status hearings, imposing behavioral rewards, incentives and sanctions, and seeking development of consensus-based problem solving and planning. While the judge should seek consensus of the team, the judge is charged by operation of law with ultimate decision making authority

- 4.10 Community supervision / probation shall play a significant role in the veterans treatment court. Each veterans treatment court shall work with the Department of Correction and/or misdemeanor probation to coordinate home visits and other community supervision activities and regular communication as determined by the veterans treatment court team.

It is understood that supervision in the veterans treatment court setting will be individualized to the needs of participants as determined by the veterans treatment court team.

- 4.11 Each veterans treatment court shall have a written drug testing policy and protocol describing how the testing will be administered, standards for observation to ensure reliable specimen collection and chain of custody, how quickly results will be available to the team, the laboratory to be used, procedures for confirmation, and process for reporting and acting on results.

- 4.12 Monitoring of abstinence through truly random, observed urinalysis or other approved drug testing methodology shall occur no less often than an average of twice weekly or ten times per month throughout veterans treatment court participation. More frequent drug testing may be required for randomization but is not evidence-based nor cost-effective. Except in the case of alcohol testing which may be necessary on a more frequent basis and utilizing effective methodology for alcohol detection.

- 4.13 Veterans treatment court staff shall routinely have drug test results within 48 hours.

- 4.14 Drug testing shall be available on weekends and holidays.

- 4.15 The veterans treatment court shall give each participant a handbook and/or written documentation setting forth the expectations and requirements of participation including:

- (a) Clear written guidelines identifying possible sanctions and incentives and how those sanctions and incentives will be utilized.
- (b) Court contact information with dates, times and court locations
- (c) Drug testing locations, times and process
- (d) Treatment contact information, location(s) and expectations
- (e) Probation contact information
- (f) Coordinator contact information
- (g) Fees and costs of participation
- (h) Mentor program information
- (i) Veterans Service Officer contact information
- (j) Veterans Justice Outreach Specialist/Coordinator contact information
- (k) Graduation/Termination criteria

- 4.16 Research has shown that for sanctions to be effective, they must be, in order of importance: (a) certain, (b) swift, (c) perceived as fair, and (d) appropriate in magnitude. While sanctions for noncompliance should generally be consistent, they may need to be

individualized as necessary to increase effectiveness for particular participants. When a sanction is individualized, the reason for doing so should be communicated to the participant to lessen the chance that he or she, or his or her peers, will perceive the sanction as unfair.

Research has shown that successive sanctions imposed on a participant should be graduated to increase their effectiveness.

Increased treatment intensity shall be based upon clinical need and not imposed as a sanction for noncompliance as specified in Section 3.9

Comment: It is important that the judge convey to the participant that any sanction for noncompliance is separate from any change in treatment intensity.

4.17 Positive responses, incentives, or rewards to acknowledge desired participant behavior shall be emphasized over negative sanctions or punishment.

Comment: Research shows that at least four positive reinforcements to each punishment are most effective.

4.18 Graduation Criteria shall include at a minimum:

- (a) Successful completion of all recommended treatment**
- (b) Successful completion of the chosen cognitive restructuring program (e.g. MRT, CSC)**
- (c) 6 months of continuous abstinence from alcohol or other drugs immediately preceding graduation**
- (d) Maintenance of responsible vocational, educational, housing, and financial status for a reasonable period of time**
- (e) Demonstrated effective use of a community-based recovery support system**
- (f) Payment of fees or an agreed upon payment plan for any outstanding balance**
- (g) Acceptable written long term recovery plan**

4.19 All members of the veterans treatment court team shall maintain frequent, ongoing communication of accurate and timely information about participants to ensure that responses to compliance and noncompliance are certain, swift and coordinated.

4.20 The veterans treatment court shall have a written policy and procedure for adhering to appropriate and legal confidentiality requirements and should provide all team members with an orientation regarding the confidentiality requirements of 42 USC 290dd-2, 42 CFR Part 2.

4.21 Participants shall sign the statewide uniform consent for disclosure of confidential information and other consent forms required upon application for entry into veterans treatment court.

Comment: The statewide uniform Consent for Disclosure is attached as Appendix A.

- 4.22 Care shall be taken to prevent the unauthorized disclosure of information regarding participants. Progress reports, drug testing results, and other information regarding a participant and disseminated to the veterans treatment court team, shall not be placed in a court file that is open to examination by members of the public. Information regarding one participant shall not be placed in another participant's file such as duplicate copies of group progress notes describing progress or participation of all group members.**

5.0 EVALUATION

- 5.1 Specific and measurable criteria marking progress should be established and recorded in a centralized data system for each veterans treatment court participant (i.e. drug testing results, compliance with program requirements, sanctions and incentives, participation in treatment, payment of fees, etc.).**
- 5.2 Specific and measurable goals for the overall veterans treatment court should be established and used as parameters for data collection and information management.
- 5.3 Veterans treatment courts shall utilize the problem solving court module in the centralized data system to record participant information and information on participation, phase movement and graduation.**
- 5.4 A wide variety of timely and useful reports shall be available from the centralized data system for review by veterans treatment court team members but will not include information that identifies individual participants.
- 5.5 Veterans treatment courts shall provide utilization data to the Idaho Supreme Court promptly by the 10th of the month. The utilization report provides at a minimum, the number of participants active in veterans treatment court at the start of the month, the number of new admissions to veterans treatment court during the month, the number of unsuccessful terminations and graduates during the month, and the number of participants enrolled on the last day of the month.**
- 5.6 Data to assess whether the veterans treatment court is functioning as intended, should be collected throughout the course of the program, particularly in the early stages of implementation.
- 5.7 Outcome evaluations using comparison groups should be implemented to determine long-term effects of the veterans treatment court.
- 5.8 Initial veterans treatment court intake information must be obtained for each participant assessed for entry into veterans treatment court. Complete intake information must be obtained for all participants who enter veterans treatment court. This data must be entered into the centralized data system for the veterans treatment**

court module. This information is essential to evaluate the effectiveness of the Idaho veterans treatment courts.

- 5.9 The district court of each county which has implemented veterans treatment court(s) shall annually evaluate the program's effectiveness and provide a report to the Supreme Court, if requested.
- 5.10 A client feedback evaluation should be conducted twice-per-year by each veterans treatment court.
- 5.11 An annual report, *The Effectiveness of Idaho Courts* will be presented to the Governor and the Legislature by the *Idaho Drug Court and Mental Health Court Coordinating Committee*, no later than the first day of the Legislative session.
- 5.12 Evaluation results/ recommendations should be reviewed and implemented on at least an annual basis and be used to analyze operations, modify program procedures, gauge effectiveness, change therapeutic interventions, measure and refine program goals, and make decisions about continuing or expanding the program.
- 5.13 Evaluation results should be shared widely.

6.0 PARTNERSHIPS / COORDINATION OF SERVICES

- 6.1 A formal written agreement, updated as needed, shall provide the foundation for collaboration, working relationships, and operating policies and procedures at the statewide level, between the Idaho Supreme Court, the Idaho Department of Health and Welfare, the Division of Veterans Services, the Department of Veterans Affairs, and the Idaho Department of Correction.
- 6.2 Each veterans treatment court shall have a formal written agreement (e.g. MOU) to provide the foundation for collaboration, working relationships, and operating policies and procedures at the local level, among the key agencies responsible for the operation of each local veterans treatment court. The agreement will be signed by the executive authority for each key agency, including at a minimum, the judicial district, the prosecutor, public defender, probation agency, treatment provider and County Commission, updated as needed.
- 6.3 Each veterans treatment court should work to establish partnerships with additional public and private agencies and community-based organizations in order to generate local support and enhance veterans treatment court program effectiveness. Such partnerships foster a complete continuum of diversion and intervention opportunities (sequential intercept model) in the community.
- 6.4 The Trial Court Administrator and Administrative District Judge in each District should convene a meeting on an annual basis engaging the executive authority of each stakeholder

agency or organization to identify and address district-wide issues affecting the operations and outcomes of the district's problem-solving courts.

- 6.5 The Coordinator for each veterans treatment court shall convene a team meeting for addressing program issues such as program evaluation results, policy changes, program development, quality assurance, communication, and problem-solving at least twice a year.**
- 6.6 The Judge for each veterans treatment court shall convene meetings at least twice a year to provide for cross-disciplinary and team development training for all members. The Judge, as team leader, is responsible for assuring participation. The Veterans Treatment Court Coordinator is responsible for assessing training needs and arranging training.** Local, state, or national training and conferences, as well as various distance learning opportunities such as video presentations or webinars
- 6.7 A local coordinating committee of representatives from organizations and agencies including the court, law enforcement, corrections, treatment and rehabilitation providers, educators, health and social service agencies, community organizations and faith community should meet regularly to provide feedback and input to the veterans treatment court program and aid in the acquisition and distribution of resources related to the veterans treatment court.
- 6.8 A state or regional training conference for veterans treatment court teams should be held annually, budget funds permitting.
- 6.9 Information on national and regional veterans treatment court training opportunities as well as available training resources will be disseminated to all veterans treatment courts, by the Statewide Coordinator.

CONCLUSION

Idaho's Courts can use these Standards and Guidelines as a foundation for creating new veterans treatment courts and for maintaining and evaluating existing veterans treatment courts. These Standards and Guidelines will assure appropriate consistency while still enabling flexibility to shape veterans treatment courts to meet regional needs. The result will be a strong, consistent, statewide veterans treatment court system that will produce positive and cost effective outcomes for offenders and the community.

IDAHO VETERANS TREATMENT COURTS



What are Veterans Treatment Courts?

Veteran Treatment Courts (VTC) use the successful framework of problem-solving courts where local teams hold regular meetings and hearings to ensure offenders in the community are held accountable. These courts match judicial oversight, intensive treatment, and probation supervision; however, the focus for VTC is on ensuring that offenders that have served their country and have substance abuse and/or mental health problems receive treatment and support in the community rather than in a correctional facility.

Challenges and Opportunities

These courts face the challenge of engaging offenders with trauma and Post Traumatic Stress Disorders (PTSD), as well as the military culture that until recently, had not typically addressed mental health needs. In Idaho, local court teams work with the Veterans Administration and community providers to coordinate resources, services, and to take advantage of the supportive camaraderie of military experience. In FY 2015, 112 veterans were served in a Veterans Treatment Court.

FY 2016 Idaho Veterans Treatment Courts Status

County	Start Date
Nez Perce	August 2013
Canyon	February 2012
Ada	March 2011
Twin Falls	October 2015
Bannock	March 2012
Bonneville	October 2015

For more information on Idaho Veterans Treatment Courts Contact:

The Idaho Supreme Court-Director of the Division of Justice Services- Kerry Hong – khong@idcourts.net
or visit the National Website: www.JusticeForVets.org

Behavioral Health Crisis Center of East Idaho

2,359

Clients

1,536 regular clients + 813 short-term clients

For example, short-term clients may only come in for a referral to a community resource and do not need a nursing assessment.

Referral Source

Hospital 228



Law Enforcement 259



Self 862



1,165

Law Enforcement Time Savings

259 Law Enforcement Referrals \times 4.5 hours = 1154.5 Estimated law enforcement time saved.

Per law enforcement, 47 people would have been taken to the ER by law enforcement if the Crisis Center were not available.

\$281,124

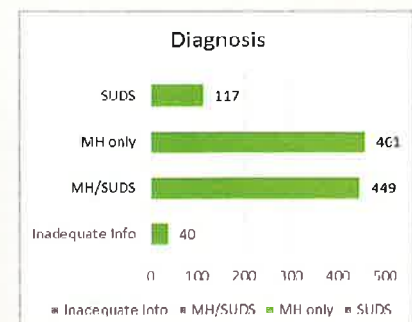
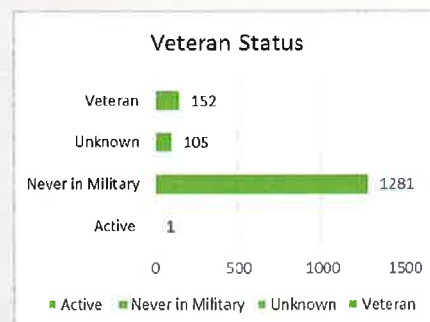
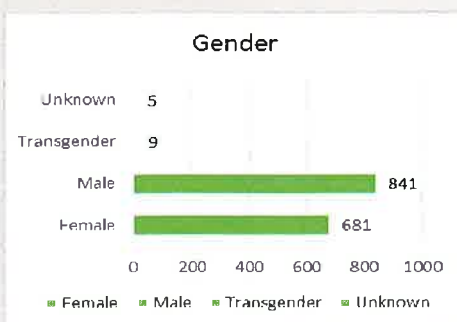
Hospital ER Savings

228 referrals from hospitals \times \$1,223 (average ER visit cost) = \$281,124 Estimated Savings.

\$483,000

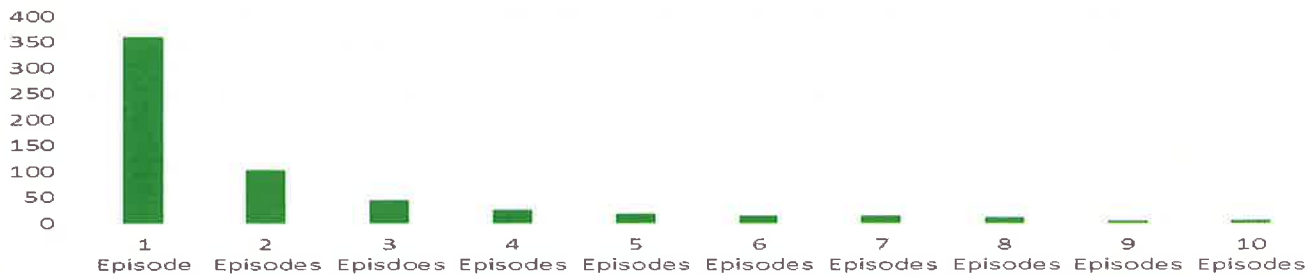
Inpatient Hospitalization Savings

138 diverted inpatient hospitalization = (138 admissions \times avg. 5 days) \times \$700 daily rate = \$483,000



Data 12-12-2014 through 12-31-2015

Client Episode



There are a number of clients with multiple episodes. Nearly all of those clients have chronic conditions such as schizophrenia and bipolar disorder. Some clients with substance use disorders have had multiple episodes due to readmission after a relapse.

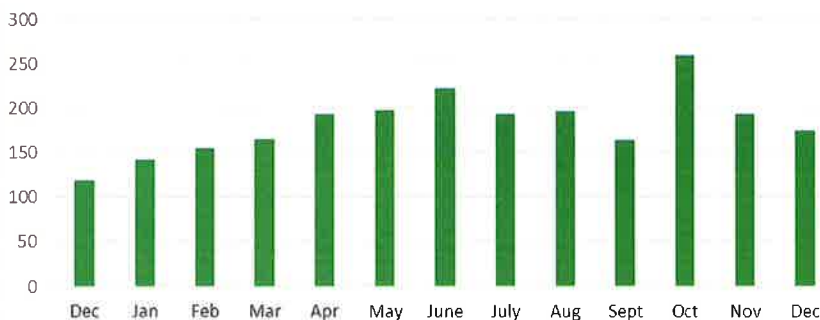
Number of Days with (x) number of Clients

# of Clients	1	2	3	4	5	6	7	8	9	10
# of Days	50	63	51	52	53	41	25	17	9	6

14 Hrs 39 Min

Average Length of Stay

Visits per Month



Client County

County Name	Total
ADA	2
BANNOCK	49
BINGHAM	86
BONNER	2
BONNEVILLE	1230
BUTTE	3
CASSIA	1
CUSTER	3
FRANKLIN	3
FREMONT	20
JEFFERSON	40
LEMHI	4
MADISON	36
NEZ PERCE	2
Out of State	40
TETON	9
TWIN FALLS	3
POWER	1
BOUNDARY	1
GOODING	1
Grand Total	1536



The Crisis Center has:

- Diverted 138 people away from inpatient hospitalization.
- Received 228 people from community hospitals.

“The crisis center has empowered law enforcement to take an active role in addressing mental health issues in our community.”

Officer Zeb Graham , Bonneville County Sheriff’s Office

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, January 29, 2016

SUBJECT	DESCRIPTION	PRESENTER
Docket No. <u>11-0501-1401</u>	Rules Governing Alcohol Beverage Control (Page 29)	Capt. Russell Wheatley, Idaho State Police
Docket No. <u>11-0501-1501</u>	Rules Governing Alcohol Beverage Control (Pending Fee section, Page 3)	Capt. Russell Wheatley, Idaho State Police
Docket No. <u>05-0102-1501</u>	Rules and Standards for Secure Juvenile Detention Centers (Page 3)	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
Docket No. <u>05-0201-1501</u>	Rules for Residential Treatment Providers (Page 14)	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
Docket No. <u>05-0202-1501</u>	Rules for Staff Secure Providers (Page 20)	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections
Docket No. <u>05-0203-1501</u>	Rules for Reintegration Providers (Page 25)	Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, January 29, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon and Jordan

ABSENT/ EXCUSED: Senator Burgoyne

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

PASSED THE GAVEL: Senator Lodge passed the gavel to Vice Chairman Nonini.

DOCKET NO. 11-0501-1401 **Captain Russ Wheatley**, Idaho State Police (ISP), stated that this docket deals with the Actual Use Rules as they relate to licensing. He pointed out that the Alcohol Beverage Control (ABC) bureau issues and regulates alcohol licensing for the manufacture, transportation and sale of beer and wine, as well as liquor by the drink. Licenses in the State exceed 5,000 and include licenses issued to wineries, breweries, distributors, retail establishments and direct shippers who ship wine into Idaho from other states. **Captain Wheatley** explained the quota system used to issue licenses, the value of the licenses (which varies among locations) and the number of applicants on the waiting list (see attachment 1). Because of the waiting list for applicants desiring these valuable licenses, ABC is concerned about the number of licenses that are not being used. He emphasized that while a standard under this change is not meant to be burdensome to the industry, it is important to have a minimum requirement to keep liquor licenses in good standing.

Captain Wheatley reviewed the process of adopting rules regarding the licenses (Idaho Code § 23-9084 and IDAPA 11.05.01.14.01). The term "actual use" is used in these rules, but the definition of the term has not been established. Because of the ambiguity, several cases have been litigated costing ABC thousands of dollars. In order to establish a viable definition, ABC invited conversation with the participants in the industry and asked for public comment. However, no feedback or comments were received. The ABC followed up with a survey targeting very small and remote license holders to determine the normal usage of their licenses (see attachment 1). These surveys were used to establish the base number of hours per week and the liquor-by-the-drink sales per week, two of the factors used to determine actual use. **Captain Wheatley** pointed out that dormant liquor licenses instill frustration in applicants on the waiting list and reduce the positive economic benefits to the State, such as revenue from the Idaho State Liquor Division, the creations of jobs and tax revenue.

Captain Wheatley explained that this rule does not affect specialty licenses because they are already restricted. In addition, the Captain reported that the Idaho courts have ruled that there is not a property right to a liquor license.

Senator Davis inquired how the House Judiciary, Rules and Administration Committee acted on this proposal. **Captain Wheatley** replied that ABC was not successful in the House. **Senator Davis** stated that the House felt this should not be a rule but should be statutory. He asked if the ISP disagreed with that approach. **Captain Wheatley** responded that they did not disagree. **Senator Davis** inquired if Captain Wheatley was asking to withdraw the rule. **Captain Wheatley** said he was not. **Senator Davis** commented that in looking at Idaho Code § 23-9084 he interprets it as being in conflict with ABC's proposal since it says the license must be in force for six consecutive months before it can be forfeited. This proposal imposes an additional standard beyond six consecutive months. **Captain Wheatley** pointed out that the six consecutive months is the exception listed in the rule. **Captain Wheatley** further explained that when a new license is issued and the new licensee accepts it, the new licensee has 180 days to put it to use. When it is established that the license is being put to use, it must be in use six days a week, eight hours a day for the first six months. It cannot be sold or transferred during the first two years. The rule being considered in this docket covers everything outside of that spectrum. They are trying to clarify what "actual use" means. **Senator Davis** acknowledged that he understands the intent of this rule, but that it goes beyond statute. He suggested they put it into statute.

Senator Souza asked what the fee is for beer and wine licenses, and how many of those and how many there are in Idaho compared to liquor licenses. **Captain Wheatley** replied that he did not have those statistics at hand, but a beer license is \$50 and a wine license is an additional \$150. Quota system licenses are issued for about \$750. There are almost 3,000 beer, beer and wine, brewery and other licenses, and they differ from liquor licenses. **Senator Souza** inquired if an establishment with a liquor license could also sell beer and wine. **Captain Wheatley** responded that they could.

MOTION:

Senator Davis expressed his agreement with the ISP. He moved to not take up an actual vote on **Docket No. 11-0501-1401** today but to make it subject to the call of the chair to reconsider this issue after some work is done to clarify the language. **Senator Souza** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO:
11-0501-1501**

Captain Wheatley, ISP, returned to the podium to present this docket. He stated that this rule applied to growlers. He exhibited a growler and explained that growlers are containers that can be filled with liquor on tap. He added that they have various designs and are made of a variety of materials. They are filled with beer or wine by a licensed retailer, winery or brewery. He detailed the history of growlers in Idaho. **Captain Wheatley** described his research into the laws and rules in other states with regard to growlers and found that some states required them to be sealed and some did not. In looking at Idaho's open container law, Idaho Code § 23-505(2), it was obvious these would be considered open containers since they are not factory sealed. He was concerned for consumers who would have their growler filled and then put it on the front seat or floorboard of their car to take it home. He indicated that he had received many questions in his office regarding the size of growlers and felt minimum and maximum sizes should be defined.

In order to prepare this legislation, Captain Wheatley held meetings with stakeholders and discussed various questions pertaining to growlers. The seal for a growler caused the most concern. ABC was asked by members of the industry to procure the tape so it would be consistent and retailers could purchase it from ABC. **Captain Wheatley** recounted the course of his research which resulted in using a tape that was tamper proof.

Captain Wheatley pointed out that this docket provides clear rules for those who sell growlers. It states the size will be a minimum of 750 ml, equal to a standard wine bottle, and a maximum of one gallon. The rule also identifies who can fill growlers (employees of licensed retailers, breweries or wineries who are the proper age). It states that growlers are for off-premise consumption and provides for the collection of \$20 to be collected by ABC to cover the costs of the tape, mailing fees and administrative costs. **Captain Wheatley** noted that the tape would need to be tamper proof.

Captain Wheatley declared that ABC now has the tamper-proof tape and is ready to conduct the training.

Senator Jordan asked if people with growlers have been pulled over for having an open container. **Captain Wheatley** replied the he had no specific examples, but people have been pulled over for open containers. **Senator Jordan** inquired if there were two separate markets, pubs and retail establishments. She perceived that grocery and convenience stores have implemented taping to prevent consumption in their stores. **Captain Wheatley** responded that some retailers use tape, but the tape is not tamper proof. **Senator Jordan** queried if a sober driver would receive an open container ticket if a growler or partially consumed bottle of wine being brought home from a dinner party were in the car. **Captain Wheatley** replied that a person can be pulled over for many reasons. If there is a traffic stop and the growler were observed, it would be at the discretion of the officer whether or not a ticket would be issued.

Senator Souza inquired if she were stopped with a growler in her car but had no alcohol on her breath, would she receive a ticket? **Captain Wheatley** reiterated that it would be at the discretion of the officer.

Senator Johnson expressed a need for a more definitive definition of "growler", the purchase of growlers from outside of Idaho, the capacity of the growler and who is responsible for sealing the growler. **Captain Wheatley** stated that if a growler were brought in from another state, once in Idaho the consumer would be subject to the laws of the State of Idaho. Regarding the seal, the retailer is responsible for filling and sealing the growler, according to Captain Wheatley. He also pointed out that a growler cannot be prefilled. It requires a licensed bottling facility in order to prefill a bottle. The growler is just a container until the alcohol is put into it.

Senator Lee stated that she also lives in a border city, and that Oregon has implemented an education campaign to advise consumers growlers are subject to open container laws and they need to be put in the trunk. She asked if Captain Wheatley felt a public awareness campaign would be beneficial in place of legislation. **Captain Wheatley** asserted that while he did not have a budget for that, the distributors could manage such a campaign. **Senator Lee** pointed out that a point-of-sale notification would be a good way to get the information to the consumer.

Vice Chairman Nonini expressed similar concerns regarding border towns. He also asked about the brown color of the bottle making it difficult for an officer to determine how much liquid was in the bottle. He inquired if growlers were different colors. **Captain Wheatley** explained that the amber color protects the product. There are some that are solid metal so they are not transparent. He pointed out that the seal would be an effective way to determine that the growler is not an open container. **Vice Chairman Nonini** inquired what the House did with this rule. **Captain Wheatley** replied that it was passed in the House.

Senator Davis discussed with Captain Wheatley problems in the definition of a growler as well as who would have the duty to seal the growler. **Senator Davis** expressed a need for clarifying the language in the rule.

Senator Davis proposed that if the rule passes, Captain Wheatley will come back next year with a rewrite that imposes the affirmative duty at the point of sale to securely cap it, and then to put tamper-proof on top of it. **Captain Wheatley** agreed to this proposal.

MOTION:

Senator Davis moved to approve **Docket No. 11-0501-1501**. **Senator Lodge** seconded the motion.

Senator Jordan indicated concern regarding business owners needing to have the tape on hand. If they run out of tape they may be out of business until it arrives. Without having evidence that people are abusing this she stated she could not support the motion.

Senator Lee complimented the ISP on educating the people about the laws and on their professionalism. She reiterated Senator Jordan's concern that there would be a competitive disadvantage for small business owners. She stated that she would not support the rule.

Senator Sousa voiced her concern about the impact on small business. Without data to indicate a problem, she prefers starting with education.

Senator Lodge stated that she will support this motion mainly to assist young people from being charged with carrying an open container.

Vice Chairman Nonini inquired where the container would need to be kept so it would not be subject to the open container law. **Captain Wheatley** replied that the law simply says "out of reach" of the driver.

Senator Anthon expressed concern about passing a rule with the idea that it will be brought back next year with adjustments. He stated he will not support the motion.

**SUBSTITUTE
MOTION:**

Senator Johnson moved to reject **Docket No. 11-0501-1501**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
05-0102-1501**

Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections (IDJC), introduced Steve Jett from the Southwest Idaho Juvenile Detention Center.

Director Harrigfeld detailed the recommended changes in the rule dealing with training that will ensure high-liability courses are taught by instructors who are certified in the subject. The grading matrix will show that students are meeting the requirements of the class ensuring that officers who work with juveniles meet an adequate level of proficiency.

Director Harrigfeld pointed out that other changes are to 1.) delete the record of deposits language because offender accounts are no longer maintained by any of the juvenile facilities, and 2.) delete redundant language regarding emergency situations. She indicated that the rest of the changes involve clarifying rules, including those relating to corrective action and security devices training in POST as well in the juvenile facilities.

MOTION:

Senator Souza moved to approve **Docket No. 05-0102-1501**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
05-0201-1501**

Director Harrigfeld reminded the committee that she was asked to come back to confirm these rules from last year. She provided handouts to define what happened with these rules for the new members of the Committee. She pointed out that these changes are mainly for clarification (see attachment 2). **Senator Jordan** asked if IDJC has policies that identify the gender of the person conducting the search? **Director Harrigfeld** answered that it is in Docket No. 05-0202-1501. **Senator Anthon** requested clarification of the section dealing with personal provider vehicles. **Director Harrigfeld** replied that juveniles in custody will not be transported in the private vehicles of anyone who works for a contract provider unless it is an emergency.

MOTION:

Senator Anthon moved to adopt **Docket No. 05-0201-1501**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
05-0202-1501**

Director Harrigfeld explained that this rule revision changed terms defining medical health professional. The wording concerning body searches was revised to establish that the health professional conducting the body search will be of the same sex as the child. She added that a body cavity search may only be conducted in a medical facility outside of the juvenile facility. **Senator Davis** inquired what procedures are in place regarding juveniles in transition. **Director Harrigfeld** explained that the sex of the health professional would be the choice of the juvenile.

MOTION:

Senator Lodge moved to adopt **Docket No. 05-0202-1501**. Senator Lee seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
05-0203-1501**

Director Harrigfeld pointed out that the rule in this docket contains the same changes already passed but they are for the reintegration providers.

MOTION:

Seantor Davis moved to adopt **Docket No. 05-0203-1501**. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Nonini passed the gavel back to Chairman Lodge.

ADJOURNED:

Chairman Lodge adjourned the meeting at 3:02 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Actual Use Rules

- Actual Use Idaho Code 23-932 gives the director of the Idaho State Police the authority for rulemaking.
- ABC Duties
 - Issuance and regulation of alcohol licensing
 - Manufacture, transportation & sale of beer & wine
 - Regulate the sale of liquor-by-the-drink by retail licensees
 - 5,000 licenses issued annually to wineries, breweries, distributors, retail establishments, and direct shippers who ship wine into Idaho from other states.

Quota System

- 1 for every for every 1,500 population within an incorporated city.
- Currently 862 quota system licenses issued
- Limited number of licenses and a higher demand in some cities & so Idaho law allows the licenses to be transferred between private parties.
- The value a license is different in different locations of Idaho due to various factors but to give you an idea here are the current values around the state:

City	Current Value	# Quota Licenses	# Priority Wait List
Boise	\$160,000	137	65
Coeur d'Alene	\$202,000	31	23
Idaho Falls	\$165,000	38	14
Lewiston	\$166,000	22	4
Pocatello	\$77,000	36	17
Twin Falls	\$95,000	31	10
Ketchum	\$233,000	10	9

*The highest price paid for a liquor license transfer was in Ketchum for \$335,000 in 2010

- Priority waiting list for liquor licenses
- Modifications to Idaho Code and to IDAPA to try and ensure these licenses are used once they are issued, and that they are not just received and placed into a drawer.
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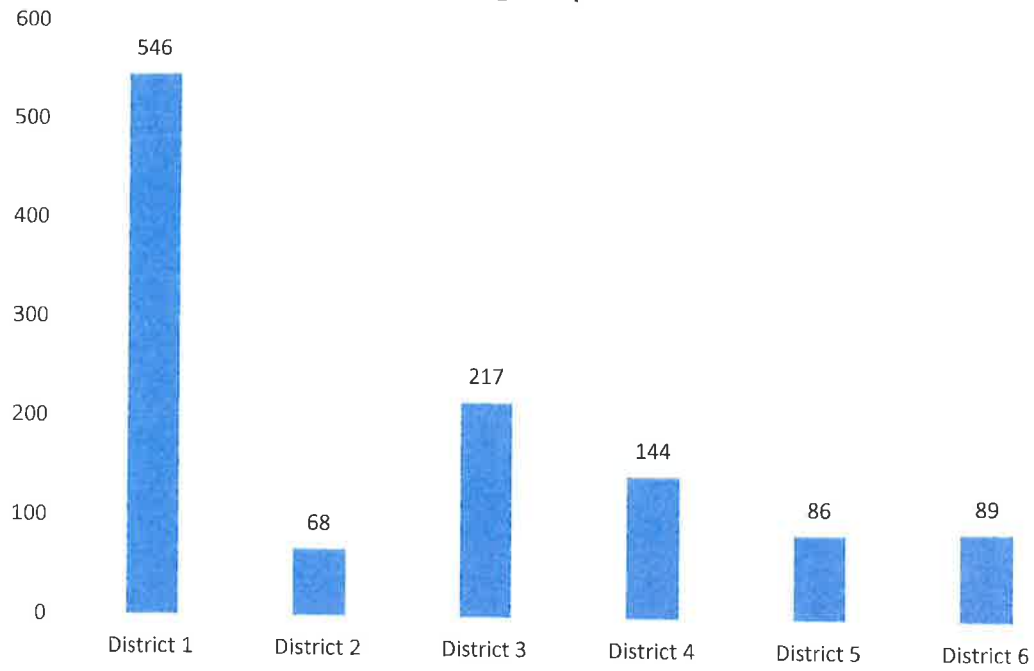
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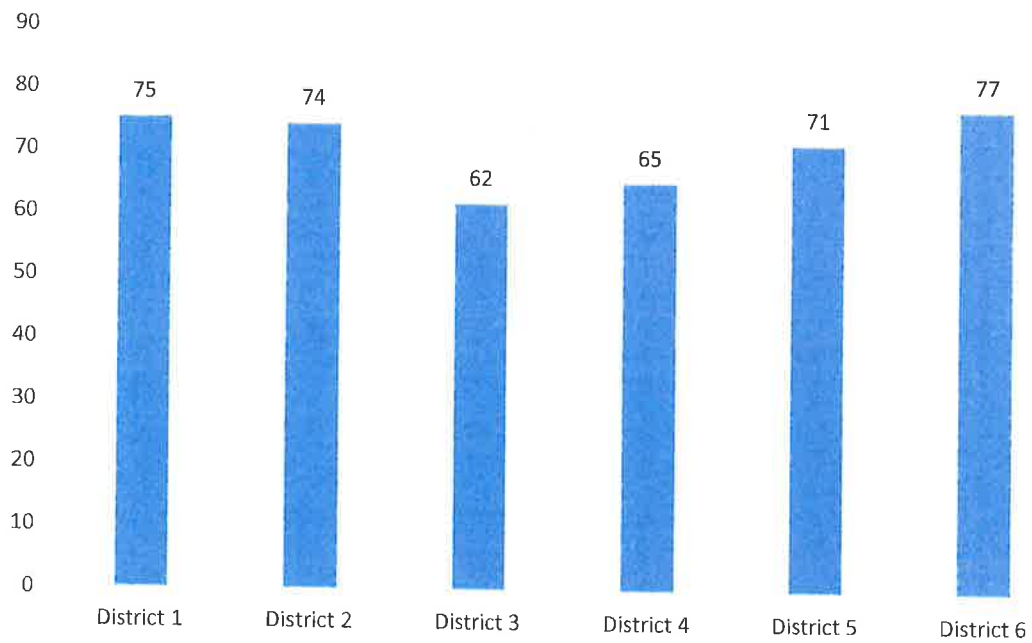
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Minimum Average Liquor Sales Per Week



Average hours open per week



Idaho Department of Juvenile Corrections
Population Statistics
January 26, 2016

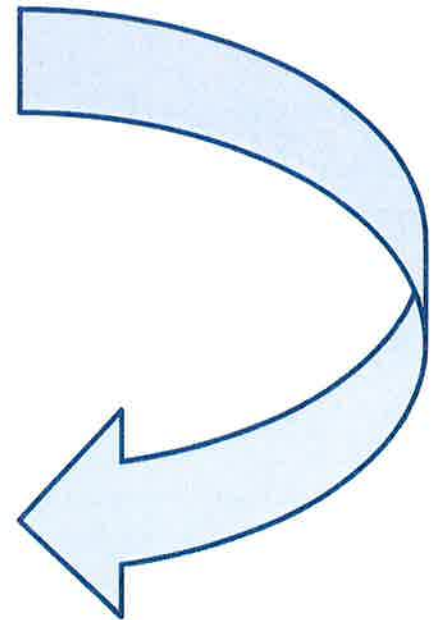
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Contract provider	66
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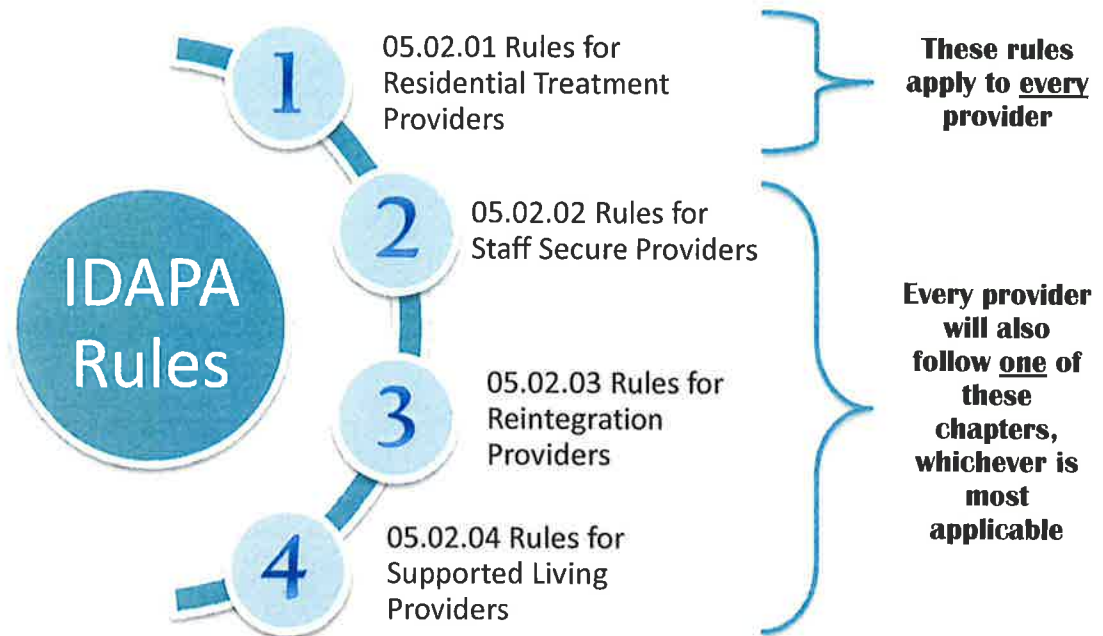
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Revision of IDAPA Rules for IDJC Providers

Summary of Major Changes



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2. Lengthened the amount of time a provider has to accept or deny a referral from two business days to four business days.
3. Included a section to address volunteers of minimal use. This allows for the provider to use volunteers who meet certain criteria without necessitating a background check or providing the required training.
4. Revised the section related to the Prison Rape Elimination Act (PREA) to increase compliance with the PREA Juvenile Facility Standards.
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18. Lengthened the amount of time *reintegration providers* and *supported living providers* have to complete the juvenile's service implementation plan from five business days to ten business days.

Actual Use Rules

- Actual Use Idaho Code 23-932 gives the director of the Idaho State Police the authority for rulemaking.
- ABC Duties
 - Issuance and regulation of alcohol licensing
 - Manufacture, transportation & sale of beer & wine
 - Regulate the sale of liquor-by-the-drink by retail licensees
 - 5,000 licenses issued annually to wineries, breweries, distributors, retail establishments, and direct shippers who ship wine into Idaho from other states.

Quota System

- 1 for every for every 1,500 population within an incorporated city.
- Currently 862 quota system licenses issued
- Limited number of licenses and a higher demand in some cities & so Idaho law allows the licenses to be transferred between private parties.
- The value a license is different in different locations of Idaho due to various factors but to give you an idea here are the current values around the state:

City	Current Value	# Quota Licenses	# Priority Wait List
Boise	\$160,000	137	65
Coeur d'Alene	\$202,000	31	23
Idaho Falls	\$165,000	38	14
Lewiston	\$166,000	22	4
Pocatello	\$77,000	36	17
Twin Falls	\$95,000	31	10
Ketchum	\$233,000	10	9

*The highest price paid for a liquor license transfer was in Ketchum for \$335,000 in 2010

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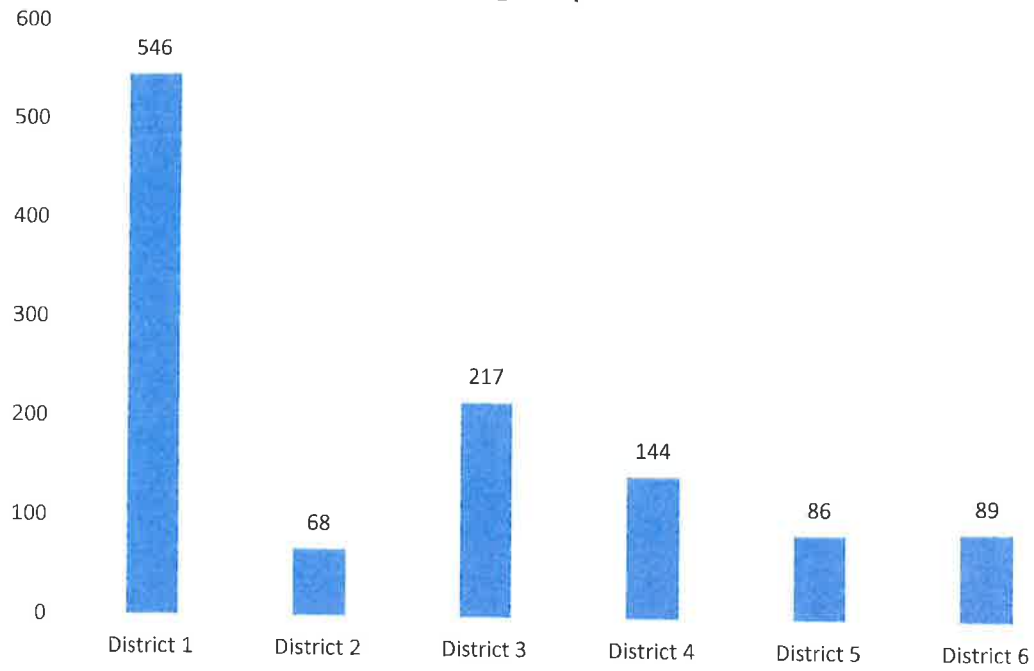
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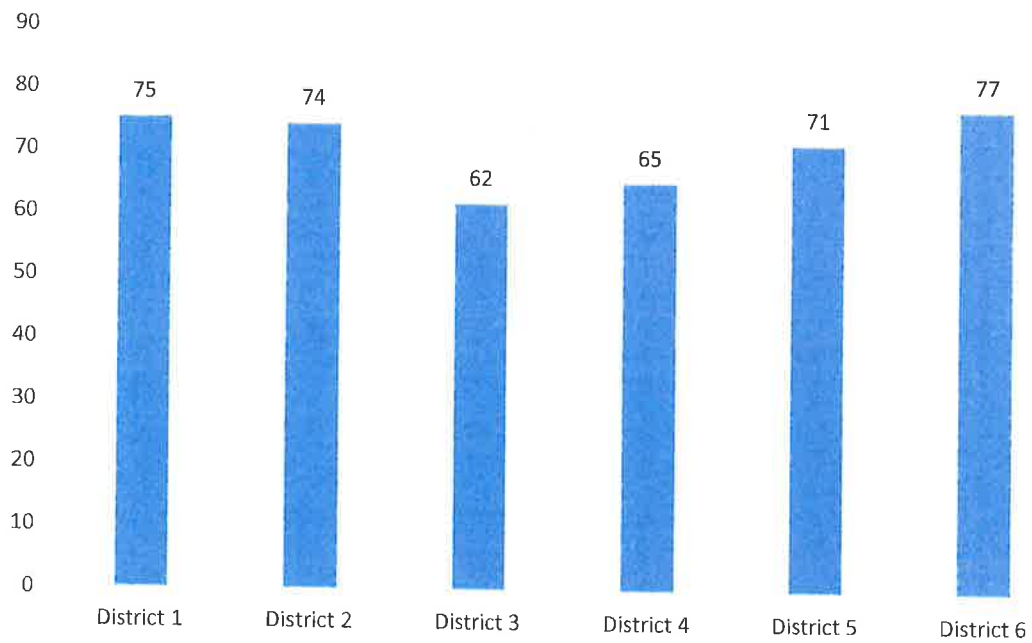
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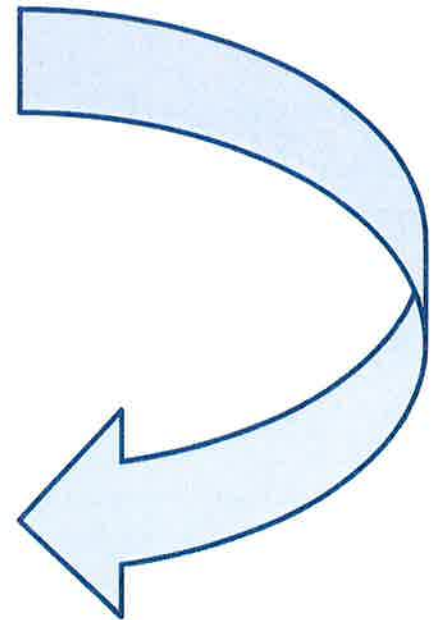
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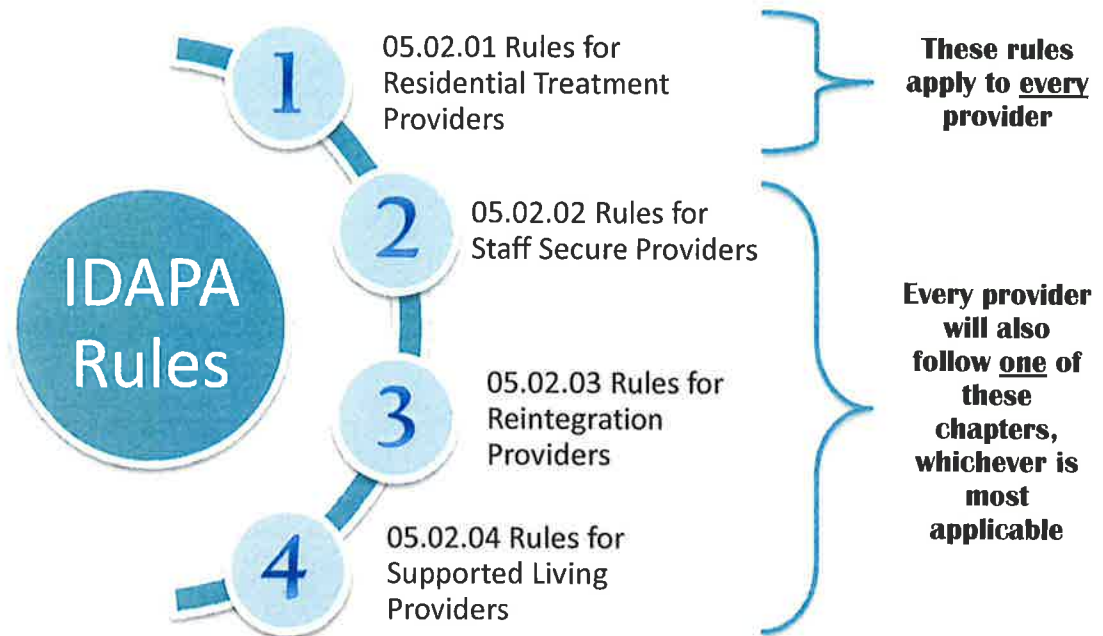
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AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 01, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	January 20, 2016	Senator Lee and Senator Johnson
Gubernatorial Appointment Hearing	Cindy P. Wilson, State Board of Correction	Cindy P. Wilson
<u>RS24001</u>	Amending Idaho Code relating to juvenile offenders	Sharon Herrigfeld
<u>DOCKET NO. 06-0102-1502</u>	Rules of Correctional Industries (Proclamation Section Page 3)	Andrea Sprengel, Financial Manager
<u>DOCKET NO. 50-0101-1501</u>	Rules of the Commission of Pardons and Parole (Page 72)	Jack Carpenter, Business Operations Manager
Presentation	Idaho Criminal Justice Commission overview and update	Sara Thomas, Chairperson

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 01, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Senator Davis

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:32 p.m.

CORRECTION: The Agenda was corrected to reflect that Docket No. 06-0102-1501 should be Docket No. 06-0102-1502.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of January 20, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT HEARING: **Cindy P. Wilson**, having been appointed to the State Board of Correction (Board), introduced herself as being a home-grown Idahoan. She enthusiastically described her Idaho roots, her interest in politics and government resulting from her service as a page when she was in high school, her dedicated involvement in education and her love for her students. **Ms. Wilson** declared that her reason for wanting to be on the Board is that she sees a definitive connection between education and correction. **Ms. Wilson** continued, emphasizing that she was highly impressed by the professionalism and dedication of the teachers and the probation and parole officers. She recognized the improvement being implemented in corrections and emphatically affirmed her hope to assist offenders in changing their lives and gaining dignity.

Senator Burgoyne asked Ms. Wilson to explain her background in business and administration, qualifications set forth in Idaho code. **Ms. Wilson** expressed that her background in education and government activities would be her expertise. **Senator Burgoyne** then inquired about the statutory criteria relating to political party. He wanted to be sure she was in compliance with the requirements for . **Ms. Wilson** assured him that she was in compliance.

Senator Lee stated she was very impressed with Ms. Wilson's enthusiasm and her experience. She asked Ms. Wilson to identify issues she sees as a challenge in connection with corrections. **Ms. Wilson** stated that financial constraints, balancing the security of the community with individual rights and the successful return of offenders to society at large are current challenges.

Senator Souza was impressed by Ms. Wilson's overwhelming enthusiasm for learning, for teaching and for being part of change. **Senator Souza** referred to a concern expressed previously by Director Kempf regarding the decrease in General Education Development (GED) graduates among offenders and asked if there has been any improvement. **Ms. Wilson** replied that the GED program recently put out a new test and there has been a drop in the graduation rate nationwide. When the teachers are familiar with the new curriculum and testing procedures she expects the graduation rate will go up. **Senator Souza** inquired if the GED aligned with Idaho core standards. **Ms. Wilson** replied that common core standards are not applied in teaching in the correctional facilities. The GED test is completely separate from other tests.

Senator Johnson solicited Ms. Wilson's suggestions for recruiting the right people for the Idaho Department of Correction (IDOC). **Ms. Wilson** advised that there have recently been some innovative ways to bring the right people in. IDOC needs positive press to show that working in corrections is a good career. **Senator Johnson** noted that the Board encourages IDOC to establish advisory committee groups and work with the community. He requested she share her ideas about advisory committees. **Ms. Wilson** emphasized that IDOC now has advisory committees and people from communities being mentors for those moving into the community, helping with finding housing, getting jobs and other functions of living in the community. Advisories can be groups or individuals and their mentoring helps keep the offenders from immediately returning to previous behaviors.

Chairman Lodge advised that the Committee will vote on her appointment at the next Committee meeting.

Senator Jordan commented on Ms. Wilson's intelligence and her encouraging interaction with students. She expressed confidence that Ms. Wilson will bring exceptional talent to the Board.

RS 24001

Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections, advised that this legislation would amend Idaho Code § 20-511 to more clearly define when an informal adjustment can occur and when it can be dismissed. She went on to detail the results of this change (see attachment 1).

MOTION:

Senator Burgoyne moved to introduce **RS 24001** to print. **Vice Chairman Nonini** seconded the motion. Motion passed by **voice vote**.

**PASSED THE
GAVEL**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

**DOCKET
NO.06-0102-1502**

Andrea Sprengel, Financial Manager for Idaho Correctional Industries, IDOC, recounted that this rule was adopted last session and went into effect November 6, 2015. At that time the Committee requested that modifications be made to language related to the definition of a private agricultural employer and the use of the word "shall." **Ms. Sprengel** stated that the definition of a private agricultural employer was changed by referencing Idaho Code § 44-1601(2). The word "shall" has been replaced with "will."

Vice Chairman Nonini and the Committee were unable to access this docket as it was only available online through a program pathway unfamiliar to Committee members, as explained and demonstrated by **Brad Hunt**, Office of the Administrative Rules Coordinator. **Senator Jordan** expressed concern that the public would have difficulty accessing the rule using the procedure shown. She asked consideration of the rule be deferred to the next meeting, allowing the public a chance to see it.

**DOCKET NO.
50-0101-1501**

Vice Chairman Nonini announced that the Committee will not vote on this rule today but will take it up again at the next meeting.

Chairman Lodge explained that she had carried this legislation and she emphasized the need for the inmates to have the opportunity to work in agriculture. She thanked IDOC for supporting it and giving inmates a way to pay fines, charges and child support so they can return to the community without charges pending. This positive circumstance will help reduce recidivism.

Senator Johnson inquired who gets paid first if there is a hierarchy for payment.

Ms. Sprenkel replied that the inmates are paid first, then the costs for the program are covered, next are contributions to the Victim's Compensation Fund, and whatever is left is used by Correctional Industries.

Chairman Lodge questioned how the money for the commissary and for saving for their release is maintained. **Ms. Sprenkel** stated that the inmates' wages will go into their trust account and can then be used for paying restitution, child support or in the commissary.

Vice Chairman Nonini thanked Ms. Sprenkel and reiterated that the Committee will take action at the next meeting.

Jack Carpenter, Business Operations Manager, Commission of Pardons and Parole (Commission), informed the Committee that most of the changes are minor and will not create a significant impact for the Commission. He pointed out that the changes relate to clarifying language, making process more transparent and bringing the rules into compliance with statutes. He provided a listing of all changes covered in this docket (see attachment 2).

Senator Jordan asked for clarification of the term "excessive" in item five (see attachment 2). **Mr. Carpenter** explained that the term "excessive" was too hard to define. The term "no alcohol use" is the current practice, hence this change.

Mr. Carpenter pointed out that item six removes reference to institutional parole. He advised that changes are in progress that may require the use of institutional parole. Due to that circumstance, **Mr. Carpenter** requested that the Committee reject item six and leave the term in the rules.

Vice Chairman Nonini inquired why Mr. Carpenter was not taking the items in order. **Mr. Carpenter** replied the items he addressed were those that were discussed when previously presented and seemed to be of greater concern. The others are minor changes. He added that he would go straight through if the Committee preferred. **Chairman Nonini** inquired if by "previously" Mr. Carpenter meant in a presentation to the Senate Committee or to the House Committee. **Mr. Carpenter** replied that it was to the House Committee. **Vice Chairman Nonini** requested that the items be presented in order.

Mr. Carpenter proceeded to present each item as listed in attachment 2. There were questions regarding only some of the items.

Senator Burgoyne questioned item one, asking why the term "infractions" is being removed from both technical and non-technical violations. He also requested an explanation of how infractions are considered. **Mr. Carpenter** referred the question to Sandy Jones, Executive Director. **Director Jones** explained that infractions are not considered unless connected to another parole violation. She pointed out that the word "infraction" is not used in statute and this change aligns the wording in the rule with that in statute.

A lengthy discussion ensued around the Justice Reinvestment Initiative (JRI) changes, violent infractions and the difference between technical and non-technical violations.

Mr. Carpenter explained minor changes for items three, four, seven and eight (see attachment 2). He explained that item nine makes the process of having one's firearms rights restored more transparent and understandable. **Vice Chairman Nonini** inquired if it is possible to get firearms back with a felony conviction. **Mr. Carpenter** indicated that it is and that this change would make the process more understandable.

Seantor Lee asked if the Commission now has the authority to determine firearm restoration, who had that authority before? **Mr. Carpenter** stated that the authority has been with the Commission. This change made that more understandable and more transparent.

Mr. Carpenter related that item ten was simply the removal of a provision that has never been used and would not be good practice if it were used.

Mr. Carpenter stated that the change to item eleven is to clarify the process for an offender to be transferred to his country of citizenship under the Foreign National Treaty (FNT). A Memorandum of Understanding (MOU) was signed in 2006 by the Governor, Department of Correction and the Committee to give the authority to comply with the FNT. The Committee felt the statement of authority should be added to the IDAPA rules. **Senator Souza** expressed concern that this was all new language, and she requested more explanation. **Director Jones** detailed the history of Idaho's involvement with the FNT and stated this change is simply to put in rule what has been done since 2006. She also explained the process involved in having an inmate sent to his or her country of citizenship.

Senator Bourgoyne inquired if this rule limits the Governor's discretion or if it only limits what the Commission can do, allowing the Governor to act independently at any time he wants to. **Director Jones** answered that she does not believe it binds the Governor.

MOTION:

Senator Anthon moved to accept **Docket No. 50-0101-1501**, provided that the Committee reject subsection 250, parole subsection 5, and all subsequent numbering remain the same. Seconded by **Senator Jordan**.

Senator Burgoyne stated that he supports the motion but has serious concerns that the rule may serve to limit the statutory or constitutional discretion of the Governor. **Senator Anthon** agreed with Senator Burgoyne. He suggested the Committee consider that ambiguity of this rule.

The motion passed by voice vote.

**PASSED THE
GAVEL**

Vice Chairman Nonini passed the gavel back to **Chairman Lodge**.

Chairman Lodge requested that Sara Thomas, Chairperson, Idaho Criminal Justice Commission, come back at a later date to make her presentation as the committee meeting time as ended.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

20-511. Diversion or Informal Disposition of the Petition

- The proposed change clarifies the process for granting Informal Adjustments to juveniles
 - The statute, in its current form, requires that the admission by the juvenile and the granting of the informal adjustment had to occur at the admission or denial hearing.
 - In addition to not being common practice in most juvenile courts, it is impractical for the decision for the juvenile to admit the allegations in the petition as well as the judge to grant an informal adjustment at the initial stage of the proceedings.
 - The amendment to the statute would allow the admission as well as the granting of the informal adjustment to occur at any stage of the proceeding, which is in keeping with common practice.
-
- Additional changes are proposed effecting the final outcome of the Informal adjustment, specifically that if the court is shown that the terms and conditions of the informal adjustment have been met, there is no longer a need to continue the informal adjustment, and it is compatible with public interest, than the court shall dismiss the case.
 - Previously this was discretionary and the amendment clarifies that if the court, in their discretion, is satisfied that the conditions to dismiss have been met, than the case is required to be dismissed. It doesn't so much remove the court's discretion, but places the discretion in determining whether the conditions have been met rather than whether or not the case is to be dismissed.
-
- The amendment also relieves juveniles of the duty to file an application for dismissal with the court.
 - This is in keeping with the common practice in many courts and alleviates the cost and time associated with making application to the court, both for the juvenile and their representing counsel as well as the court.

To: Senate
Judiciary & Rules Committee
Chairman Lodge
Vice-Chairman Nonini

From: Business Operations Manager, Jack Carpenter

Date: February 1, 2016

Re: Idaho Commission of Pardons and Parole pending rules. Docket 50-0101-1501

Chairman Lodge, Vice Chairman Nonini, and Committee Members

Most of our rule changes this year are fairly minor and won't create a significant impact to the Agency. Many of these changes are focused on clarifying language, making processes more transparent, and bringing our rules into compliance with statutes.

The following are proposed changes with a brief explanation.

1. Removes infractions from the definitions of "non-technical violation" and "technical violation". **Section 010 Definitions Page 75**
2. Clarifies the Executive Director's authority to recall a decision: This authority was already in place. We simply wanted to clarify it in our rules. *IC20-210, Section 200 Decisions, Page 80*
3. Adds provisions for confidential evaluations of substance abuse. *IC20-223, Section 200, Hearing Process, page 78*
4. Provides additional explanation of conditions of a parole contract including sanctions and rewards and that the conditions be in writing and signed by the parolee. *IC20-223, Section 250 Parole, page 82*
5. Clarifies what constitutes excessive alcohol use: We changed the wording to mirror a standard condition of parole which states that NO alcohol use is allowed. *IC 20-228, Section 250, Parole Page 83*
6. Removes reference to institutional parole. Please reject this sub-section 250.05 page 83 only as we may need to use this section in regards to the 90/180 day sanctions for parole violators. **Section 250.50, Institutional Parole, page 83**
7. Authorizes violation hearing officers to implement 90/180 day sanctions without appearing before the Commission. *IC20-229B, Section 400, Parole Revocation, pages 88-89*
8. Provides Violation Hearing Officers the authority to impose sanctions: This is intended to match language that was placed into statute during last year's Legislative Session. *IC 20-229B, Section 400 Parole Revocation Process Page 89*
9. Implements firearms restoration conditions and guidelines: We added clarifying language to make the process by which someone may apply to have their firearms rights restored more transparent and easier to understand. *IC18-310, Section 551 Restoration of Firearms, pages 95 & 96*
10. Removes reference to staff progress reports: This section does not need to be in rule. any longer. We are asking to delete it this section as the use of staff progress reports to request parole by staff has is not a best practice and has never been used. Offenders have the SIPR

process to request a reconsideration of a commission decision. ***Section 552, Staff Initiated Progress Report, Page 96***

- 11.** Provides guidelines for a prisoner transfer to his country of citizenship under the Foreign National Treaty: An MOU was signed in 2006 by the Governor, The Department of Correction, and the Parole Commission granting the Parole Commission the authority to comply with the Foreign National Treaty. This process simply needed to be added to our IDAPA rules. ***IC20-104, Section 800, Foreign National Treaty, Page 98***

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 03, 2016

SUBJECT	DESCRIPTION	PRESENTER
Vote on Gubernatorial Appointment	Cindy P. Wilson, State Board of Correction	
<u>RS24163</u>	Relating to revision of duties of the Attorney General regarding investigations and actions against county elected officers	Senator Jim Rice
<u>SCR 132</u>	Stating findings of the legislature and recognizing Idaho peace officers for their service to the State.	Senator Fred S. Martin
<u>RS24185</u>	Increasing fine for failing to have liability insurance	Senator Grant Burgoyne
DOCKET NO. <u>06-0102-1502</u>	Continued discussion and vote on Rules of Correctional Industries (Proclamation Section Page 3)	Andrea Sprengel, Financial Manager
<u>RS24032C1</u>	Relating to utilizing unmarked patrol vehicles	Teresa Baker, Idaho State Police
<u>RS24066C1</u>	Relating to limited authority for foster parents to provide enrollment consent for foster child activities	Miren Unsworth, Department of Health and Welfare

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 03, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Burgoyne and Jordan

ABSENT/EXCUSED: Senators Davis and Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Jordan** moved to send the Gubernatorial appointment of Cindy P. Wilson to the State Board of Correction to the floor with a recommendation that she be confirmed by the Senate. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

RS 24163 **Senator Jim Rice** stated that **RS 24163** is a bill to modify previous legislation. He explained that currently only county prosecutors can investigate county officials. These county prosecutors are also the attorneys for the county officials, presenting a conflict of interest in certain situations. To correct this issue after two years of using the earlier legislation, it was decided to change the word "shall" conduct an investigation to "may." **Senator Rice** indicated that the new revision will eliminate civil statutes and retain criminal statutes.

MOTION: **Senator Souza** moved to print **RS 24163**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

SCR 132 **Senator Fred Martin** explained the background behind the formation of this legislation recognizing Idaho police officers for their service to the State. He then introduced Representative Pat McDonald.

Representative Pat McDonald expressed his appreciation for the police officers of Idaho, detailing some of the issues society would face without them. He then pointed out positive characteristics of police officers including nobility, courage, veracity, empathy, sensitivity, a deep sense of ownership, dedication and commitment. **Representative McDonald** gave several examples of officers he has observed demonstrating these characteristics. He discussed the dangerous situations police officers face on a daily basis, pointing out that the "bad guys" know who the police officers are, but the officers do not necessarily know who the "bad guys" are. He pointed out that police officers do not run away from dangerous situations; they run toward them. In the face of these challenges, the officers do not quit. They are sworn to uphold the Constitution of the State of Idaho and the Constitution of the United States. **Representative McDonald** stressed that these civil servants should be recognized, emphasizing that they are there not only to enforce laws, but also to help those in need. The public can always depend on Idaho's police officers to help whenever and wherever they are needed.

Patti Bolen, Valley County Sheriff and President of the Idaho Sheriffs' Association, stated that today's technology provides speedy and extensive news coverage, a situation that is both good and bad. It is good because police forces can learn and improve; it is bad because an error is publicized to the point that the public perceives it as routine police behavior. The real routine behavior is exhibited as the officers go into harm's way every day because they are dedicated to justice. **Sheriff Bolen** emphasized that law enforcement officers are the gatekeepers between chaos and a civil society.

Senator Martin explained that this resolution was written for all police officers, but it was inspired by Corporal Jared Bisch.

Corporal Jared Bisch, Boise Police Department, speaking with deference for the men and women of law enforcement in Idaho who sacrifice every day, and for their families, thanked the Committee for the resolution.

Senator Lodge expressed her appreciation for the law enforcement people in her life who have worked hard in protecting her family. She spoke for the Committee in expressing appreciation for the sacrifices the officers make.

Senator Jordan thanked Senator Martin for bringing this resolution and expressed her gratitude for law enforcement. Besides all of the dangerous situations they are called to deal with, they also give proactive service to the community.

Senator Lee expressed appreciation, especially for the patience officers exhibit in difficult situations.

MOTION:

Senator Burgoyne moved to send **SCR 132** to the floor. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

RS 24185

Senator Burgoyne pointed out that the Committee saw this legislation last session, but due to a technical difficulty it is being reintroduced this session. In the legislation presented last year, only two sections were changed when there needed to be three. The purpose of the legislation is to change the amount of the fine for the first infraction for not having mandatory motor vehicle liability insurance from the current \$75 to \$300. The \$75 fine has been in effect for many years, with the infraction limit being \$100. In 2014 the infraction limit was changed to \$300. **Senator Burgoyne** stated his belief that \$75 is not a disincentive for those who choose not to carry liability insurance. The legislation does not change the current law, making a second violation within five years a misdemeanor. It doesn't change the \$75 fine for not carrying proof of liability insurance. He explained that it leaves unchanged the right to avoid the penalty for not carrying proof of insurance by producing proof of insurance before conviction. Because the legislation increases the fine there is a positive fiscal impact. The distribution of the funds would be 57 percent to the Department of Transportation, 38 percent to the local highway jurisdiction and 5 percent to the Idaho State Police.

MOTION:

Senator Johnson moved to print **RS 24185**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Nonini passed the gavel back to Chairman Lodge.

**DOCKET NO.
06-0102-1502**

Andrea Sprengel, Financial Manager for Idaho Correctional Industries (ICI), offered to answer any questions the Committee members may have or to repeat her presentation given February 3.

Senator Lee felt the presentation as given was thorough, and that the public just needed the opportunity to give testimony.

MOTION:

Senator Nonini moved that **Docket No. 06-0102-1502** be approved. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

RS 24032C1

Lt. Colonel Kedrick Wills, Deputy Director, Idaho State Police (ISP), appearing for Teresa Baker, ISP, explained that aggressive driving was a factor in 56 percent of all crashes in Idaho in 2014. Members of the public frequently contact the ISP to voice their concern about aggressive driving. One tool that has been successful in 35 other states, as well as in city and county law enforcement departments in Idaho, is the use of unmarked patrol cars specifically targeting aggressive driving. Because there is also a need for marked patrol vehicles, there is a cap of not less than 90 percent of the motor vehicles being marked patrol cars. It has not been a practice to have seals on cars transporting the governor for some time, so this legislation removes that section.

Senator Lee asked for assurance that unmarked vehicles are targeting aggressive drivers and that the officers will be wearing their uniforms. **Lt. Colonel Wills** pointed out that there are directives in the procedures and practices of ISP. One is the educational component to let people know unmarked patrol cars are being used. Regarding the officers being in uniform, the ISP always patrol in a Class A uniform. Troopers will still be required to carry their commission cards with them.

Senator Burgoyne expressed concern with the language that indicates a much broader use than just for aggressive drivers. The words "or as necessary to enforce the laws of this state" seem to permit these vehicles to be used for any kind of enforcement action. **Lt. Colonel Wills** replied that is correct. ISP will replace some currently marked vehicles with these unmarked vehicles. These cars will still be the troopers' patrol cars and in order to enforce the laws, they need to be able to take action on any violation. In procedure these cars are designed specifically for the purpose of policing aggressive drivers.

MOTION:

Senator Nonini moved to print **RS 24032C1**. **Senator Souza** seconded the motion. Motion carried by **voice vote**.

RS 24066C1

Miren Unsworth, Deputy Division Administrator, Division of Family and Community Services, Department of Health and Welfare, explained that this legislation limits liability for foster parents. The Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183) requires states to establish "appropriate liability" standards so foster parents can normalize foster children's lives by enrolling them in activities. Idaho has no State statutes for this purpose. This legislation will allow foster parents and child care institutions to give permission for children and youth to enroll in activities that a reasonable and prudent parent would allow, without the concern of liability.

Senator Burgoyne expressed concern that this legislation creates a liability standard where there has been none, limits a pre-existing liability standard, or just leaves it the same. He said the way this legislation is written sounds like a negligence standard. **Ms. Unsworth** replied that in statute there are no liability protections for foster parents. The "reasonable and prudent parent" standard is defined in the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183). She explained that if the foster parents apply the reasonable and prudent parent standard to their decisions, they will be protected from liability. If they do not apply the standard, they will not be protected.

Senator Burgoyne questioned the purpose of making the change to section 3, page 6, line 12. **Ms. Unsworth** explained that the change is to make alignment with the previous correction. **Senator Burgoyne** asked if this is just an update and not a substantive change. **Ms. Unsworth** stated that was correct.

Senator Lee requested examples of activities in which foster parents are reluctant to enroll the children due to liability concerns. **Ms. Unsworth** identified signing permission slips for fields trips, consenting to soccer or cheer leading and granting permission for summer camp or a rafting trip. Although some foster parents have gone to the caseworker to get the permission, frequently the process required so much time the opportunity to participate was missed.

MOTION:

Senator Lee moved to print **RS 24066C1**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:32 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 08, 2016

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Overview and update for the Department of Corrections	Kevin Kempf, Director
	Approval of January 22, 2016 minutes	Senator Nonini and Senator Jordan
Gubernatorial Appointment Hearing	Mike H. Matthews was re-appointed to the Commission on Pardons and Parole to serve from January 1, 2016 to January 1, 2019.	Mike H. Matthews
RS24188	Amends the law relating to felons who may possess firearms.	Michael Kane, Idaho Sheriffs Association
Presentation	Overview and update for the Idaho Criminal Justice Commission	Sara Thomas, Chairperson
RS24024C1	Addresses shortcomings in Idaho's current criminal code involving offenses of a sexual nature.	Sara Thomas, State Appellate Public Defender

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 08, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Nonini** called the Senate Judiciary and Rules Committee (Committee) to order at 1:26 p.m. He indicated that Chairman Lodge would arrive as soon as she has finished with another meeting and she asked that they proceed without her.

Vice Chairman Nonini thanked those in attendance. He introduced Kevin Kempf, Director, Idaho Department of Correction (IDOC), and stated that he would give an overview and update of what is happening in IDOC.

PRESENTATION: **Director Kempf** stated that he would focus on accomplishments since the 2015 session. The two main areas of focus have been reform and transparency (see attachment 1). The Justice Reinvestment Initiative (JRI) and SB 1357 have had significant impact on IDOC and the criminal justice field. All of the requirements set by the JRI and SB 1357 were met this year, including the training of every employee across the state by October 1, 2015.

Director Kempf said an important accomplishment for IDOC was the establishment of the limited supervision unit. This program is an evidence-based program putting resources toward high-risk offenders while allowing low-risk offenders more flexibility. The program allows low-risk offenders to check in with their probation officers through a secure portal online. The JRI and the freeing up of resources have made it possible for all 173 out-of-state inmates to be returned to Idaho. **Director Kempf** recognized that a mutually beneficial relationship with the Idaho Commission of Pardons and Parole has played a strong part in this positive outcome. The success of this program and the JRI have made it possible for IDOC to return \$1.4 million to the General Fund.

According to **Director Kempf**, another major accomplishment was the institution of the Justice Program Assessment. In March 2015, IDOC asked the Council of State Governments what they felt were the big concerns with the treatment plans in Idaho's institutions. Through the assessment, IDOC found that nine out of twelve treatment plans being used did not have enough evidence to suggest that they worked. There was confusion in the pathways to parole program with more than 40 pathways being used. If parole was denied, there was no mechanism for letting inmates know why.

In considering the Therapeutic Communities program, **Director Kempf** noted there was some question regarding whether they actually worked. Research showed that inmates dictated who stayed in the program and who didn't by using the system and intimidation to gain their releases and to prevent others from getting theirs. IDOC decided to discontinue the use of Therapeutic Communities.

Director Kempf reported that in addition to discontinuing Therapeutic Communities, changes being made based on the assessment include imbedding the Cincinnati Substance Abuse Program (research based and it works); enhancing the sex offender program; implementing Thinking for a Change, the only cognitive-behavior-based program being used; and Anger Replacement Training for anger management. These programs will be used in all prisons in the State, ensuring consistency. **Director Kempf** assured the Committee that this approach will be simple and will yield better results.

Director Kempf explained that restrictive housing, also known as solitary confinement, has 400 beds in Idaho. Research nationwide has indicated that putting inmates in segregated cells does not change behavior, and most isolated inmates become repeat offenders. **Director Kempf** declared that when you put inmates in 9 x 12 cells, you are either going to enhance whatever mental health issues they have or you are going to create one. He declared that has to stop. The Director observed that the perception now is that there needs to be a way to hold prisoners accountable, but it can't be negatively based. There needs to be a way to get them integrated back into society in a positive way. At IDOC a planning team will work on short-term improvements in discipline along with positive incentives. Segregation will no longer be used as a form of punishment. The second step will be to look at long-term aspects, including reintegration into the community. Outside agencies are participating in these planning teams. Having participation by different agencies helps stakeholders to see the extent of the challenges involved.

Director Kempf informed the Committee that deliberate effort has been made by IDOC to pull the curtains back and make what is happening in their agency more transparent. These efforts include giving Idaho lawmakers 24/7 access to any one of Idaho's facilities, opening the facilities to universities to tour death row and letting students talk to the inmates. This has a powerful impact on students.

DISCUSSION

Chairman Lodge congratulated Director Kempf on his outstanding work, and commented that these accomplishments were what JRI was set up to do.

Senator Burgoyne said he was really pleased to see the "question everything approach" so the public gets a better look at what is going on. He affirmed letting data drive decisions is a good way to approach making changes. These changes are going to result in a system that is more attuned to public safety and will lead to a better understanding of rights and responsibilities.

Senator Souza stated that Director Kempf had expressed some concern about the administrative segregation of inmates allowed to go into the community and wondered what kind of safety mechanisms have been put in place. **Director Kempf** indicated that currently the community is not notified, but the sheriff's association is notified. Other states across the country have done this restrictive housing reform and their data show significant improvement. **Senator Souza** asked if community notification would be enhanced in the future. She indicated that she was on a committee in her community; a lack of trust ensued when inmates were being sent to transitional homes or halfway houses and the community was not aware of it. **Director Kempf** said that he was very familiar with the legitimate concerns that the inmates bring to a community, and it would be addressed in the future.

Senator Jordan asked if there are efforts being made to help inmates re-enter society successfully. **Director Kempf** indicated that one plan is the Community Mentor program. As inmates leave the prisons, they have immediate contact with their mentors, who will help them become established in the community.

Senator Johnson thanked the director for the access he has provided for the Legislators. He saw the dedication of the employees who work in Idaho's prisons.

Chairman Lodge thanked Senator Davis for bringing JRI to the Idaho Legislature, and indicated that there has been much more change than was anticipated.

**MINUTES
APPROVAL:**

Senator Nonini moved to approve the Minutes of January 22, 2016. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
HEARING:**

Mike H. Matthews, having been re-appointed to the Commission of Pardons and Parole (Commission), was introduced to the Committee. **Mr. Matthews** said that he had just finished his fourth assignment with the Commission. His professional experience is as an educator.

Senator Lodge asked Mr. Matthews what his views are on the changes that have been made with the Commission. **Mr. Matthews** responded that about 65% of inmates were paroled before the changes, but the percentage has increased to 70%. He indicated he is excited to stay involved with this program and to see what will happen in the future. He was concerned at first that the "checklists" discussed two years ago were going to be just that, check-lists. He acknowledged that the more appropriate term is "guidelines," which can be measured on a rubric or an assessment. These guidelines will help improve public safety. There are clear guidelines now on why parole was either granted or denied and what steps need to be taken to achieve parole.

Senator Anthon asked if there were trends that would be important for lawmakers to know about. **Mr. Matthews** stated that substance abuse issues are still there. **Senator Anthon** thanked Mr. Matthews for his service.

Senator Burgoyne asked Director Jones if Mr. Matthews' political affiliation was appropriate for this position. **Director Jones** answered that it was. **Senator Burgoyne** asked what the financial compensation was for this committee. **Director Jones** answered that there were quarterly business meetings required by statute. If one were to break down the amount of hours actually spent on this committee, the compensation would be minimum wage.

RS 24188

Michael Kane, Idaho Sheriffs' Association, asked the Committee to think about those people who leave the prison and return to society. According to the laws that currently exists, the minute inmates leave the facility, their civil rights are restored. The current law makes it clear that the worst kind of felons (murder, rape, kidnapping, drug dealing and sex crimes) cannot possess firearms after they are discharged from their sentences. Missing from the list of criminal offenses that prevent offenders from possessing firearms in the current law are crimes that have been created since the original passage of the law, or crimes that were not originally considered. These serious crimes are those committed by organized criminals, terrorists and criminal gang members. This bill adds these serious felonies to the current law. **Mr. Kane** asked the Committee to print this RS.

Senator Davis moved to print **RS 24188**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

PRESENTATION:

Sara Thomas, Chairperson, Idaho Criminal Justice Commission (ICJC), stated that the ICJC is committed to building and maintaining a safer Idaho by developing and proposing balanced solutions that are cost effective and based on best practices (see attachment 2). The ICJC focuses on learning and enhancing public understanding by communicating honestly and encouraging dialogue and feedback from outside groups. State agencies, counties, cities and other stakeholders are included in the discussion.

Senator Davis stated it seemed very incongruent to put all of these groups together as it might put the ICJC in an adversarial position. **Ms. Thomas** indicated that if they could correct issues in the early stages and work out differences, it would produce a better solution, one that is less likely to be attacked. Resolution is easier to achieve in early stages.

Ms. Thomas explained that the ICJC has a three-year strategic plan including combating crime and protecting citizens. Some of the goals are to reduce victimization and recidivism in the State of Idaho, strengthen the knowledge base by enhancing data collection abilities and promote efficiency and effectiveness.

Ms. Thomas discussed in detail the steps the ICJC will take in achieving these goals. Issues include digital media, balancing transparency with the privacy rights of victims and law enforcement, eye-witness identification and trends in substance abuse (see attachment 2).

Ms. Thomas stated that the ICJC has a number of subcommittees working on various issues. Those issues include pre-trial justice, a standardized recidivism definition, mental health, research alliance and criminal fees and fines. She referred specifically to the paper on mental illness (see attachment 3). She expounded on the work and the goals of these subcommittees.

Senator Davis indicated he was aware of a national trend dealing with the necessity of bail. He asked if there were better tools available to the courts and to the judicial process for resolving this issue. **Ms. Thomas** stated that at this time there was no discussion concerning that. The current focus is on having adequate pre-trial assessments to determine whether or not someone should be released on their own recognizance or, if not, what the level of bail should be. She offered to look into bail bonds if he wished.

RS 24024C1

Sara Thomas explained that this RS strengthens Idaho's criminal code involving offenses of a sexual nature. This legislation seeks to amend the current statute to provide that a victim of rape need not offer resistance where the victim has a well-founded belief that resistance would be futile or that resistance would result in the use of force or violence. The legislation also amends Idaho Code to replace the current female pronouns used for a victim with gender-neutral language. This renders Idaho's rape law the same for both men and women. This legislation also includes a threat to a third party as rape.

MOTION:

Senator Davis moved to print **RS 24024C1**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge thanked Ms. Thomas for her presentation and all of the information she provided in such a short period of time.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:58 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Assistant to Majority Caucus
Chairman

By: Kevin Kempf

2016 Legislative Update Idaho Department of Correction

Reform / Transparency



Justice Program Assessment

Top to bottom assessment.

Findings:

9 out of 12 programs

Confusing/Complex

Therapeutic Communities



Justice Program Assessment

Discontinue Therapeutic Communities.

From 12 to ~~4~~⁵ programs

Cincinnati Substance Abuse Program.

Sex offender program.

Thinking for a Change.

Anger Replacement Training.

Advance Skills Practice.





AN OUTLINE TO IMPROVE THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO MENTAL ILLNESS

POTENTIAL SOLUTIONS AT EACH STEP OF THE PROCESS

"In the 1830's Dorothea Dix revolutionized the care of people with mental illness by taking them out of jails and caring for them in asylums, later known as state hospitals. In the last 50 years, we have reversed this trend, resulting in a 90 percent reduction in public hospital beds for people with serious mental illness."¹ This trend has had significant consequences. For instance when individuals with serious mental illness require hospitalization, they are left with precious few options: "[s]ome patients are housed in emergency room holding areas; some return home, where family and friends struggle to provide care; and some—at considerable risk to themselves—become homeless."² The only other option appears to be jail. "Jails across the country have become vast warehouses made up primarily of people too poor to post bail or too ill with mental health or drug problems to adequately care for themselves."³ In effect and practice, "jails and prisons have become the de facto mental hospitals" of our society.⁴

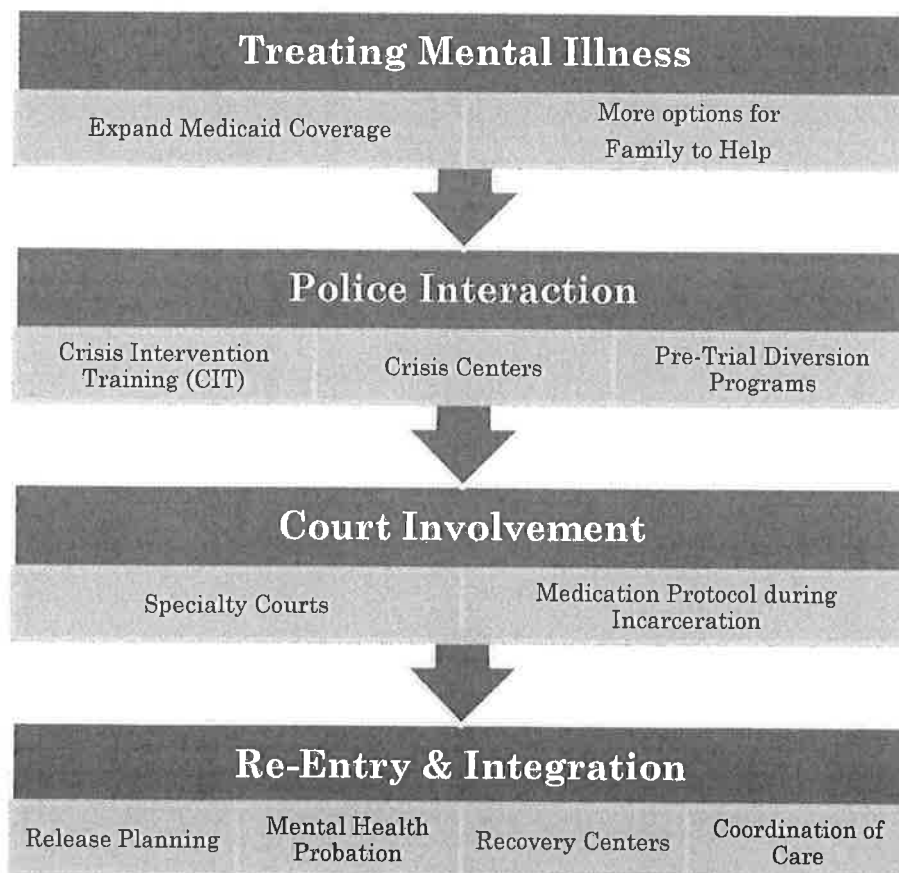
Mental health is a major issue affecting the United States and Idaho. As of 2005, "more than half of all prison and jail inmates had a mental health problem," totaling some 1,264,300 individuals.⁵ More recent surveys show that "the individuals being incarcerated have more severe types of mental illness, including psychotic disorders and major mood disorders[,] than in the past."⁶ To put this in perspective, "there are now 10 times more people with serious mental illness in state prisons (207,000) and county jails (149,000) than there are in state mental hospitals (35,000).⁷ "In 44 of the 50 states, the largest single 'mental institution' is a prison or jail."⁸

The situation in Idaho is just as bleak. The two state psychiatric hospitals can house a total of 145 mental health patients.⁹ If national trends are any indication, the "Ada County Jail in Boise (838 inmates) and the state prison in

Kuna (1,653 inmates) probably [each] hold more individuals with serious mental illness than the two hospitals combined.”¹⁰

Still, there are solutions that can help improve the situation and do more to help the mentally ill. This is the first in a series of papers that will introduce some specific, measureable, and achievable ideas for Idaho to consider implementing. Mental health is not the concern of a few individuals or families; it is and ought to be society’s concern. As Pearl S. Buck wrote: “the test of a civilization is the way that it cares for its helpless members.”¹¹

The graphic below illustrates the overall outline of suggestions proposed in this series. In order to understand the ideas suggested in this series, it is necessary to understand the outline itself. First, the steps of the justice system’s process need some explanation and definition. Then, suggested solutions at each step are given a thumbnail sketch so that the whole outline makes some sense as a cohesive set of solutions to a significant societal problem.



I. STEPS OF THE CRIMINAL JUSTICE SYSTEM'S PROCESS

A. Treating Mental Illness

This step is everything that happens before any incident. The police are not involved. An individual may know that he or she is suffering from a mental illness. Frequently, the person's family begins to suspect a mental illness as they see their loved one behave erratically, make irrational decisions, or exhibit other symptoms of mental illness.

B. Police Interaction

Once an incident has occurred and the police have been called, the criminal justice system becomes involved. There is often reluctance to call the police because incidents with the mentally ill frequently involve close friends and family – the exact people who do not want to get their loved one “in trouble” with the law. For that same reason, cases can “disappear” as witnesses become unwilling to cooperate with the police and prosecutors. This step therefore includes the police who respond to an incident, those at the scene, and (to some extent) the prosecutors involved in the case.

C. Court Involvement

Once a Court is involved, the dynamics change substantially. Courts, trials, jails, and prisons all have various ways of providing mental health treatment. This stage involves the Court itself, the prosecution, the defense attorney, the jail, and also the Department of Correction.

D. Re-Entry & Integration

Lastly, an individual is released into the community. This may be because the sentence is served, probation is granted, or the individual is paroled. This stage involves those who take part in getting the individual back into the community and transitioning to normal life.

II. POTENTIAL SOLUTIONS AT EACH STEP OF THE PROCESS

A. Treating Mental Illness

1. *Expand Medicaid Coverage*

As the old adage goes: “an ounce of prevention is worth a pound of cure.” Before a mentally ill individual has to become entangled with the criminal justice system, the best solution is to provide treatment. Mental illness does not require imprisonment. Nor should someone have to be involved in the criminal justice system in order to receive treatment. Unfortunately, without some means of paying for treatment, the mentally ill frequently are unable to access care. The most effective means of addressing mental illness is in the community – both in terms of efficacy in helping the individual and in terms of an efficient use of public funds.

2. *More Options for Family to Help*

Frequently, family and close friends know someone needs help before anyone else and perhaps even before the individual him- or herself. Before there is any involvement with police, the ability of family to get the mental health treatment that their loved one needs can save everyone involved from the trouble, heartache, and costs associated with the criminal justice system.¹² Any option for loved ones must, of course, continue to balance the individual’s rights against the individual’s need for treatment.¹³

B. Police Interaction

1. *Crisis Intervention Team (CIT) Training*

There are times when police must interact with the mentally ill. Officer safety is paramount, but the standard procedures that ensure officer safety frequently exacerbate the problems underlying the behavior of someone who needs mental health treatment. Crisis Intervention Team (CIT) Training provides officers with a different set of skills that are helpful in interacting with the mentally ill.¹⁴ CIT Training keeps the officer safe, informs the officer of mental health issues, and helps the officer de-escalate a situation in order to keep everyone safe and

uninjured. It also results in far fewer mentally ill individuals entering the criminal justice system at the outset.

2. Crisis Centers

Crisis Centers provide a place, other than jail, for police to take individuals they suspect may need mental health treatment.¹⁵ Jail is a difficult place to be for everyone, but it presents an especially challenging experience for the mentally ill. A Crisis Center is a place where they can receive treatment, which will be better because it will be in a therapeutic setting and more cheaply administered than in a jail. It also allows the police to get help for the mentally ill, while still allowing the police to get back to their regular duties. Having a place available that is specially designed to deal with the mentally ill is more humane, cost-effective, and efficient than incarceration. Hospitals have generalized procedures and (usually) long wait times for mental health patients. A Crisis Center is specifically tailored to address a mental health crisis – making a Crisis Center more cost-effective location for treating mental health crises. For instance, a recent report from the Idaho Department of Health and Welfare report shows \$38,223 in emergency room savings in just the first two months of operating Idaho's first, and so far only, Crisis Center (located Idaho Falls).¹⁶ It can also be the first link in a program of long-term treatment that can address mental illness, lessen demand for hospital resources, and decrease the necessity of future police interaction.

3. Pre-Trial Diversion Programs

The law has long recognized that it is unjust to punish someone without the requisite mental capacity. Providing options for the mentally ill can begin even before trial. They can be diverted away from trial and jail, and public resources could instead be used to stabilize individuals, diagnose illnesses, provide treatment, and maintain mental health. Obtaining mental health treatment is simpler, faster, and cheaper if the patient is not in jail.¹⁷

C. Court Involvement

1. Specialty Courts

Mental Health Courts are one of several specialty courts already gaining traction in Idaho. Though they are few in number and small in size, they are succeeding.¹⁸ Once the Courts are involved with an individual who has a mental health issue, Mental Health Court is often the best place for him or her. Mental Health Court allows an Assertive Community Treatment (ACT) Team of mental health providers, medical professionals, and vocational rehabilitation specialists to work together with a judge, defense attorney, prosecutor and probation officer to oversee progress, manage incentives, and ensure that the individual stays on track toward a productive life. Expanding the reach and capabilities of Mental Health Courts will positively impact hundreds or thousands of lives in Idaho.

2. Medication Protocol during incarceration

If incarceration is necessary, for whatever reason, the jail officials are typically not in touch with the defendant's community mental health provider. Jails also face vastly different considerations than mental health providers. The administration of medication is a difficult task that implicates medical, legal, administrative, and custodial considerations. Imagine being treated for a severe mental illness, only to have that treatment interrupted or changed by incarceration – when one likely needs stability and medication the most. Having a single, state-wide protocol for the administration of medication (especially psychotropic medication) that is consistent in every county in Idaho will hopefully remove these interruptions and smooth whatever proceedings follow, whether that is long-term treatment, court proceedings, or even continued incarceration. Establishing clear guidelines of what medications can be used when and by whom will provide better information to jailers and a more seamless transition for the mentally ill in the criminal justice system.

D. Re-Entry & Integration

1. Release Planning

Every success is founded on a plan. The same is especially true of those with mental health issues. Having a written plan for psychiatric follow-up will increase an inmate's chances of obtaining follow-up mental health treatment after release. Having such a plan should be required of mentally ill inmates. Not only does having such a plan inform the inmate of where to go for help, it also serves to coordinate mental health resources available in the community, and ultimately to avoid future crises and incidents.

2. Mental Health Probation

Mental Health Probation is essentially the same as Assisted Outpatient Treatment (AOT). It is court-ordered outpatient treatment that provides an alternative to incarceration. While already possible in Idaho, the available options are frequently under-funded and difficult to utilize. Mental Health Probation or AOT provides a setting where an individual is required to obtain treatment (which allows a court to track and enforce its orders as necessary) while providing the skills for the individual to lead a productive life (eventually free from supervision). Mental Health Probation or AOT can include elements such as: peer support, recovery coaching, coordination with a mental health care provider (see below), and other ideas that can address each individual's needs.

3. Recovery Centers

Recovery Centers are open, more or less, during normal business hours to help individuals connect with treatment providers in the community and obtain skills necessary to become self-sufficient. Recovery Centers are a tool that can be used in tandem with Mental Health Probation or AOT to great effect. Where probation provides oversight and individual accountability, Recovery Centers supply the skills needed by individuals to succeed. Recovery Centers are part of an effort aimed at long-term recovery, where individuals can learn how to successfully function without probation or the court system monitoring.

4. Coordination of Care

Just like jails and community mental health providers, a similar disconnect can exist between the Department of Correction (DOC) and community mental health providers. Long-term solutions do not simply fall together by chance. They require planning and coordination. If the DOC and the defendant's community mental health provider could work together, the defendant would face a comprehensive approach without contradictory requirements and differing goals.

III. CONCLUSION

In sum, mental health is a significant issue facing the criminal justice system. These eleven suggestions hopefully provide a framework for improving the situation in Idaho. Each will be described in more detail in successive papers. The point of this series is to provide specific, measureable, and achievable ideas to improve the way Idaho, and especially the criminal justice system, treats the mentally ill that are effective and efficient.

¹ Thomas Insel, NIMH Director's Blog: *A Misfortune Not a Crime*, NATIONAL INSTITUTE OF MENTAL HEALTH (April 11, 2014), <http://www.nimh.nih.gov/about/director/2014/a-misfortune-not-a-crime.shtml>.

² *Id.*

³ Timothy Williams, *Jails Have Become Warehouses for the Poor, Ill and Addicted, a Report Says*, NEW YORK TIMES, p. A19 (February 11, 2015).

⁴ *Id.*

⁵ Doris S. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, BUREAU OF JUSTICE STATISTICS, p. 1 (Special Report, September 2006).

⁶ Dean Aufderheide, *Mental Illness in America's Jails and Prisons: Toward a Public Safety/Public Health Model*, HEALTH AFFAIRS (April 1, 2014), <http://healthaffairs.org/blog/2014/04/01/mental-illness-in-americas-jails-and-prisons-toward-a-public-safetypublic-health-model/>.

⁷ Insel, *supra* note 1.

⁸ *Id.*

⁹ IDAHO DEPT. OF HEALTH AND WELFARE, *About Idaho's State Hospitals*, <http://www.healthandwelfare.idaho.gov/medical/mentalhealth/statehospitals/tabid/495/default.aspx> (last visited November 24, 2014).

¹⁰ THE TREATMENT ADVOCACY CENTER, *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey* (2014), <http://www.tacreports.org/treatment-behind-bars> (last visited November 24, 2014); see also Audrey Dutton, *In Crisis: Courts and jails double as mental health providers*.

IDAHO STATESMAN (October 30, 2014), http://www.idahostatesman.com/2014/10/30/3456444_courts-and-jails-double-as-mental.html?rh=1.

¹¹ Pearl S. Buck, *MY SEVERAL WORLDS* (1954)

¹² Presently, involuntary commitment can only begin if (1) the person is in the hospital already and a medical professional determines that the individual “is gravely disable due to mental illness” or “poses an imminent danger to that person or others,” (2) when a law enforcement officer makes a similar determination, or (3) a loved one applies after the individual has been evaluated by a mental health examiner. I.C. §§ 66-326 & 66-329.

¹³ In Idaho, a neutral judge balances those sometimes conflicting interests within some strict time limits to avoid any unnecessary delay. I.C. §§ 66-326 & 66-329.

¹⁴ See Horace A. Ellis, *Effects of a Crisis Intervention Team (CIT) Training Program Upon Police Officers Before and After Crisis Intervention Team Training*, ARCHIVES OF PSYCHIATRIC NURSING, vol. 28, pp. 10-16 (2014) (showing that police officers’ knowledge, perceptions, and attitudes about mental health significantly improved after CIT Training).

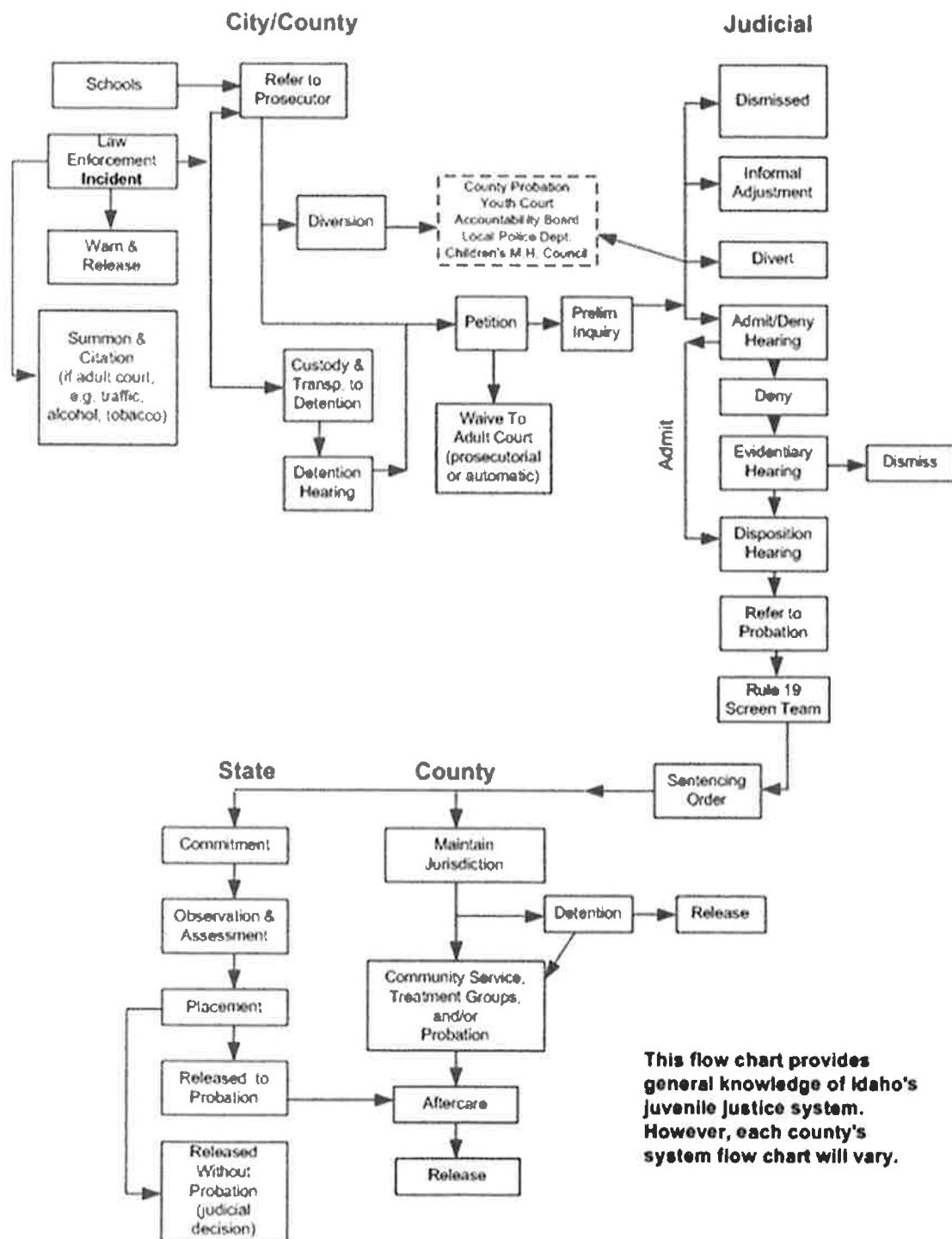
¹⁵ See Ali Tadayon, *Crisis center to open Dec. 4 in Idaho Falls*, IDAHO STATESMAN (November 23, 2014), <http://www.idahostatesman.com/2014/11/23/3503144/crisis-center-to-open-dec-4-in.html>.

¹⁶ DIVISION OF BEHAVIORAL HEALTH OF THE IDAHO DEPT. OF HEALTH AND WELFARE, *Crisis Center Update* (February 2015).

¹⁷ See Williams, *supra* note 3 (noting that “seeking mental health services sometimes meant longer stints in jail, . . . [i]n Los Angeles, those seeking help spent more than twice as much time in custody than did others — 43 days, compared with 18 days”).

¹⁸ See Keith Cousins, *Mental Health Court celebrates 10 years*, COEUR D’ALENE PRESS (November 7, 2014), http://www.cdapress.com/news/local_news/article_73776c53-747b-5eff-88c6-af85b40136f5.html.

General Flow Chart of Idaho's Juvenile Justice Process



**This flow chart provides
general knowledge of Idaho's
juvenile justice system.
However, each county's
system flow chart will vary.**

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 10, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:31 p.m.

GUBERNATORIAL APPOINTMENT: **Senator Anthon** moved to send the Gubernatorial re-appointment of Mike H. Matthews to the Commission of Pardons and Parole to the floor with the recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24208 **Robert Aldridge**, Trust and Estate Professionals of Idaho, stated that the Delegation of Powers by Parent or Guardian had been used in various circumstances where a parent hands over their child to another family, often a grandparent, for a temporary period of time. Some reasons for using the delegation are deployment, changes in school districts, substance abuse or other problems of the parent. The use of this privilege is quick and inexpensive. It doesn't preclude an interested person from bringing a formal proceeding, which can happen if the person receiving the delegation is not appropriate to care for the minor. Guardianship proceedings may follow, and they can be expensive and time consuming, ultimately causing a delay in taking care of the minor. Idaho law currently allows a procedure in probate cases for a nomination of a guardian through a will, requiring only acceptance of the nomination to be filed in the probate case by the nominated individual. This bill parallels that law for situations in which the delegating parent is not deceased but has become incapacitated or unable to care for the minor. The existing statute contains provisions for situations where another person has parental rights and also allows an interested person to bring a formal proceeding. Such might happen if the person nominated is not an appropriate person to care for the minor. This bill allows an inexpensive and flexible alternative to more expensive court proceedings but does not preclude such proceedings when appropriate.

Please note that Mr. Aldridge said he decided to pull the RS to work on it further.

RS 24209 **Mr. Aldridge** said that the background for this bill is the same as for **RS 24208**, but it addresses the issue of only an immediate delegation. There have been several requests to allow a parent or parents to make that delegation or guardianship to the person(s) they have chosen, but to have it go into effect only if certain events come to pass. This bill allows a springing delegation, similar to financial powers of attorney. Events associated with this delegation are listed as either incapacity of the parent, incarceration of the parent or certification by the parent that the delegation should become effective. This allows an inexpensive and flexible alternative to more expensive court proceedings, but does not preclude such proceedings when appropriate.

Senator Davis discussed several areas where the language could be confusing. One example is differentiating between "nominating" parent and "delegating" parent. **Mr. Aldridge** conceded that the designation should be changed to "delegating" parent. Other concerns were expressed by Senator Burgoyne, Senator Lee and Senator Anthon.

MOTION:

Senator Davis moved that the bill be returned to the sponsor for additional work. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

RS 24220

Mr. Aldridge explained that Idaho law provides for certain effects of divorce on wills, but a number of situations are not covered by existing law. Such situations can present difficult problems if the divorcing spouses are not aware of the need to make changes. This bill creates a default provision for revocation of certain designations in the event of a divorce. It does not preclude court orders overriding such default provisions, nor spouses agreeing to a continuation of the designations. Section 1 corrects some technical problems in Idaho Code § 15-2-802. Under the Idaho Uniform Probate Code (Code), "person" is a very wide group of not just individuals but entities as well. The proper term in this Code section should be "individual." Also the provisions of (b)(2) properly only apply to an invalid decree of divorce. This section is from the Code, adopted in Idaho in 1972, and these changes have been made in an updated version of the Code. Section 2 adds a new section, also contained in the updated Code, expanding the effects of a divorce past existing provisions and severing Joint Tenancy With Right of Survivorship ownership into equal tenancies in common.

Senator Davis suggested that "person" be changed to "individual." **Mr. Aldridge** agreed. **Senator Davis** asked if it is possible for someone to stipulate that their spouse still get benefits in the event of a divorce with this bill. **Mr. Aldridge** indicated that it was. One would just so specify in a divorce decree or property settlement, or it could be stated in the will itself by specifying that they are to be included even if they are not currently a spouse. There are other types of transactions that this bill also needs to address.

Senator Jordan suggested that "man and wife or husband and wife" need to be neutral.

MOTION:

Senator Davis moved to print **RS 24220**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 24221

Mr. Aldridge stated that many financial institutions in Idaho have not authorized the Community Property with Right of Survivorship (CPROS) option for ownership of Idaho accounts. They are only offered Joint Tenancy with Right of Survivorship (JTROS). This causes problems for basis step-up at the first death of a married couple, since CPROS receives a stepped-up basis on both halves of the asset, while JTROS property receives a step-up on only half of the property. This unfairly penalizes couples who have community property but cannot properly designate their account. This bill solves that problem by stating the community property does not lose its community property status by being deposited into an account, however entitled. This also covers the situation where only one name appears on the account, but the property deposited was community. This bill sets the default provision absent such agreement. The second part of the bill makes it clear a right of survivorship arising from a CPROS designation on an account cannot be changed by a will. A change must be made at the financial institution level. This bill clarifies some existing questions in the law and conforms to the general practice in the State for the questions addressed.

Senator Burgoyne asked what was meant by "provisions of this chapter" found on line 11 of the bill. **Mr. Aldridge** stated that the provisions were the tests on whether something is really a survivorship account to eliminate standards as opposed to a convenience account. The banks want the protection of knowing there can't be something in a will that could be probated 2-3 years later that says it is not a survivorship account. They do not want to be held liable. By not allowing alterations to a will, it gives protection to the person who is named on the joint account. This will protect both the banks and the people whose names are on the documents.

Senator Davis briefly described methods used to avoid probate. He focused on the fact that right of survivorship should not apply only to real estate but to personal property as well. Inheritances, under Idaho law, are the property of the named party. If a divorce occurs after an inheritance, the unnamed party cannot make a claim to it. If those funds are put into a joint checking account, they become community property.

MOTION: **Senator Davis** moved to print **RS 24221**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24255 **Mr. Aldridge**, Trust and Estate Professionals of Idaho, stated that this bill removes cross references to the term "family allowance" from the probate provisions of the Code.

MOTION: **Senator Lee** moved to print **RS 24255**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 24256 **Mr. Aldridge** described digital assets and their place in today's society. He indicated that this bill is a result of national dialogue and cooperation, including the major players in the digital asset industry and privacy interests. It allows access to the digital assets by a fiduciary and gives account holders control by allowing them to specify whether their digital assets should be preserved, distributed to heirs or destroyed. The fiduciary must provide proof of authority by a certified document. A custodian of a digital asset that complies with the fiduciary's request is immune from liability if they are reasonable and in good faith. Since digital assets travel across state lines nearly instantaneously, and people relocate, it is desirable to have a uniform law in as many jurisdictions as possible.

MOTION: **Senator Burgoyne** moved to print **RS 24256**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:45 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 12, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Senators Johnson and Souza

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: Chairman Lodge called the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

Senator Davis indicated that, although the RSs to be presented could go directly to the Tenth Order for consideration by the Senate, he requested they be brought back to the Committee after printing for further discussion prior to going to the floor. **Chairman Lodge** advised that the RSs would be returned to the Committee after printing.

RS 24343 **Senator Davis** explained that **RS 24343** changes Senate Rule 20 to make the language more consistent with how the rule is applied. An addition to Senate Rule 20H states that the Chair's decision is final and cannot be appealed to or by the Committee, which is the historical practice of the Idaho Senate.

Senator Burgoyne pointed out that there has been productive discussion among the majority and the minority leadership. On the other RSs they were able to reach an agreement, but not on this one, and he would be voting no.

MOTION: **Senator Lee** moved to send **RS 24343** to print. **Senator Anthon** seconded the motion. Motion passed by **voice vote**. **Senator Burgoyne** and **Senator Jordan** requested to be recorded as voting nay.

Senator Davis affirmed that the leadership of both parties and in both houses have worked hard to reach conclusions on which they can agree. He noted that each of the remaining RSs are sponsored by the majority and the minority leadership.

RS 24346 **Senator Davis** related that there has been concern about the fifty-fifth legislative day when it occurs on a Saturday. **RS 24346** provides clear direction by amending Joint Rule 20 to state "transmittal must be made on or prior to the fifty-seventh day."

MOTION: **Senator Nonini** moved to send **RS 24346** to print. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

RS 24347 **Senator Davis** observed that Joint Rule 21 deals with video recordings of the proceedings in the Senate Chamber. In order to maintain comprehensive records, **RS 24347** will direct that a copy of recorded proceedings beyond two years old will be provided to the State archivist.

MOTION: **Senator Nonini** moved to send **RS 24347** to print. **Senator Lee** seconded the motion. Motion passed by **voice vote**.

RS 24487

Senator Davis referred to Joint Rule 18, pointing out that **RS 24487** has received the most attention of this group of RSs. After much consideration the entire rule was rewritten. There is now one section for the Statement of Purpose and one section for the Fiscal Impact, providing clear and adequate information for the public. Regarding the Fiscal Impact, **Senator Davis** stated that "No fiscal impact" should not be used without an explanation. Under this legislation, if one-third of the Committee perceives that the fiscal note is inaccurate, a subcommittee can be appointed to examine it for a future meeting. He mentioned other changes that were for clarifying purposes.

MOTION:

Senator Burgoyne moved to send **RS 24487** to print. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

Senator Nonini inquired if these would come back to the Committee after printing. **Senator Davis** replied that they do not have to come back, but he suggested that they do come back. **Senator Nonini** expressed that he was approached about a fiscal note being "none" when in fact it carried a very large fiscal impact to county government. He supported the return of the RSs to the Committee. **Chairman Lodge** reaffirmed that they will come back to the Committee.

Chairman Lodge acknowledged the six Gubernatorial appointees who were in attendance, stating that members of the Committee had been able to meet with them informally prior to the Committee meeting.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Michael David Johnston, Sexual Offender Management Board (SOMB), who was reappointed to SOMB, detailed his background including his involvement as Vice Chairman of SOMB and Chairman of the subcommittee to reform the registry for SOMB. He also informed the Committee of his work as a private clinician and as a forensic psychologist.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Jeffrey A. Betts, who was reappointed to SOMB, stated that he is serving as the Juvenile Treatment and Assessment Specialist on SOMB. He stated that he is a licensed professional clinical counselor and a marriage and family therapist. **Mr. Betts** advised that he has also worked with juvenile sexual offenders in a residential program, Terry Reilly Health Services, focusing on juveniles in an outpatient setting and now works with St. Luke's Health System. He also provides private consultation services and juvenile sexual abuse evaluations.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

William Dale Crawford, who was appointed to SOMB, informed the Committee that he is the Chief Investigator of the Canyon County Prosecutor's Office and has been in law enforcement for 25 years. He related that he started the first polygraph program for Caldwell. **Mr. Crawford** stated that he has a private business where he provides criminal and civil polygraphs and sex offender testing. The Legislature determined it was necessary to have a polygrapher on SOMB. He added that he is looking forward to serving in this position.

Senator Nonini stated that Mr. Crawford did not answer the question dealing with party affiliation. He inquired what Mr. Crawford's party affiliation is. **Mr. Crawford** replied that he is a Republican.

Senator Jordan asked why there needs to be a polygrapher on SOMB. **Mr. Crawford** answered that the process of rehabilitating sex offenders has two parts, treatment and supervision. Polygraphs are used in treatment to determine the offenders' backgrounds so proper treatment can be provided. When offenders are released, for the safety of society, probation requires polygraphs every few months to make sure they are following probation requirements.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Matthew Allen Thomas stated that he is the Sheriff of Washington County and has been in law enforcement with that county for about 18 years. He holds certifications through Peace Officer Standards and Training (POST). He explained that Idaho Sheriffs register sex offenders in their counties and enforce the law regarding the registry.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Moira A. Lynch, introduced herself and explained that she has a degree from Boise State University in criminal justice. She pointed out that she has been with the Idaho Department of Correction (IDOC) for 19 years and has been a supervisor in the Sex Offender Management Unit in District 4. Now she is the District Manager supervising Ada, Boise, Elmore and Valley counties. **Ms. Lynch** asserted that she wants to continue serving Idaho and to lend her expertise and knowledge in community corrections and probation and parole to SOMB.

Chairman Lodge noted that Ms. Lynch has 100 employees and asked how many offenders they supervise. **Ms. Lynch** replied that she has 60 probation and parole officers and 40 with other assignments. There are more than 4,000 offenders being supervised.

**GUBERNATORIAL
REAPPOINTMENT
HEARING:**

Erwin Sonnenberg mentioned that he served as Coroner for Ada County. Some of his investigations analyzed victims of sexual assault. He observed that he has also dealt with perpetrators who died from suicide or murder. Being an elected official, **Mr. Sonnenberg** pointed out that he has discussed with numerous members of the public their concerns regarding sexual offenders. He commented that his accessibility to the public and his knowledge of their concerns will be of benefit to SOMB.

Senator Burgoyne asked Kathy Baird, Management Assistant for SOMB, if all of the statutory criteria have been met for these appointees. **Kathy Baird** replied that each position on SOMB is appropriately filled and referred Senator Burgoyne to the Idaho SOMB handout (see attachment 1).

Senator Lee inquired of Ms. Baird if it is difficult to recruit people due to the nature of SOMB and asked if the Committee could assist in any way. **Ms. Baird** stated that the level of difficulty in recruiting depends on the position. She explained that it has been difficult, at times, finding a public member or a public defender member. She went on to say that it was not a big problem but only dealt with certain positions.

PRESENTATION:

Jon Burnham, Chairman, SOMB, informed the Committee that he has held his position for less than a year, having taken over for Shane Evans. He referred the Committee to the brief sheet (see attachment 1, page 3) that he will be using. **Mr. Burnham** shared the history of SOMB and noted the SOMB and their expertise. He thanked the Committee for approving the new polygraph specialist position and noted that SOMB now certifies the polygraphers throughout the State.

Mr. Burnham outlined accomplishments achieved during the last year, including providing certifications for adult and juvenile psychosexual evaluators, adult and juvenile treatment providers and post-conviction polygraph examiners. He identified the standards for these certifications (see attachment 1, page 1). **Mr. Burnham** then detailed the tiered adult and the tiered juvenile sex offender registration processes (see attachment 1, pages 1-2).

Future plans for SOMB, according to Mr. Burnham, include revisions and improvements in the tiered programs, continuing education programs for community providers, juvenile community supervision guidelines and recommendations and refinement and implementation of the quality assurance process. **Mr. Burnham** provided the website, www.somb.idaho.gov, for more information and continuing updates.

Chairman Lodge asked about the public registration for Level 3 Juveniles and Level 5 adults (see attachment 1), requesting the number of individuals at each of those levels. **Mr. Burnham** replied that at this time they do not have an estimate. He stated that they are in the process of researching to establish an estimate.

ADJOURNMENT There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:42 p.m..

Chairman Lodge
Chair

Carol Cornwall
Secretary



IDAHO * Sexual Offender Management Board

- * 11 Members representing specific areas of expertise
- * To develop, advance and oversee statewide sexual offender management policies



* About the Board

- * New sex offender registration system for juveniles
- * Different from adult system
- * 3 levels – High, Moderate, Low
- * Based on overall risk



* Tiered Juvenile Sex Offender Registration



- * Also in development –
- * Continuing education program for community providers
- * Refine and implement Quality Assurance processes
- * <http://www.somb.idaho.gov>

* In Conclusion

IDAHO SEXUAL OFFENDER MANAGEMENT BOARD



BOARD MEMBERS:

Jon Burnham,
LCSW
Chairman

*Idaho Dept. of
Juvenile Corrections*

**Michael
Johnston, PhD**
Vice-Chair

*Adult Sexual
Offenders*

Jeffrey Betts,
LCPC, LMFT

*Juvenile Sexual
Offenders*

Paula Garay,
LMFT

Cultural Diversity

Moirra Lynch

*Idaho Dept. of
Correction*

Jean Fisher

*Deputy Ada County
Prosecuting Attorney*

**Kimberly
Simmons**

*Deputy Canyon
County Public
Defender*

Matt Thomas
*Washington County
Sheriff*

**Erwin
Sonnenberg**
Public Member

**William
Crawford**
PCSOT Polygraph

**Christina
Iverson**
Idaho Supreme Court

BRIEF SHEET 2016

WE ARE

The Sexual Offender Management Board (SOMB) was formed by the Idaho Legislature in 2011 to develop, advance and oversee statewide sexual offender management policies. It is an independent 11-member policy board administratively based within the Idaho Department of Correction, but functions separately from IDOC.

Idaho Sexual Offender
Management Board

*Standards and Guidelines for
Adult Sexual Offender
Management Practices*

*Edition: 2013
Revised 11/2013*

ACCOMPLISHED

- ✓ Developed comprehensive standard formats for adult and juvenile pre-sentence psycho-sexual evaluations utilized by the courts
- ✓ Established standards for psychosexual evaluations, adult and juvenile sex offender treatment, and post-conviction sex offender polygraph examinations
- ✓ Established qualifications and certification procedures for psychosexual evaluators, sex offender treatment providers and post-conviction sex offender polygraph examiners
- ✓ Established procedures for filing complaints against SOMB-certified providers
- ✓ Developed Quality Assurance procedures to ensure adherence to the SOMB's established standards

Idaho Sexual Offender
Management Board

*Standards and Guidelines for
Practitioners, Evaluations
and Treatment of Juvenile
Sexual Offenders*

*Edition: 2014
Revised 11/2014*

IN DEVELOPMENT

- ☐ Multi-level risk-based sexual offender registration systems for juveniles and adults to:
 - ◇ Enhance public safety by accurately identifying and assessing offenders' risk of sexual re-offense
 - ◇ Assist in focusing law enforcement and community supervision resources on higher risk offenders
 - ◇ Provide incentives for offenders' prosocial behavior
- ☐ On-going continuing education program for community providers who work with sexual offenders
- ☐ Juvenile community supervision guidelines/recommendations
- ☐ Refine Quality Assurance processes

SOMB
c/o ID Department of Correction
1299 N Orchard St Ste 110
Boise, ID 83706

Phone: 208-658-2002
Fax: 208-287-3322
E-mail: somb@idoc.idaho.gov

"Any displayed, physical or unlawful solicitation for sexual conduct with a person who is unwilling or unable to give legal consent is an act of sexual violence."

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 15, 2016

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	January 27, 2016	Senator Mary Souza and Senator Kelly Anthon
Vote on Gubernatorial Appointment	Jeffrey A. Betts, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	William Dale Crawford, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Matthew Allen Thomas, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Moira A. Lynch, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Michael David Johnston, Sexual Offender Management Board	
Vote on Gubernatorial Appointment	Erwin L. Sonnenberg, Sexual Offender Management Board	
<u>RS24289</u>	Corrects and clarifies provisions in statute regarding name changes.	Michael Henderson
<u>RS24138</u>	Relating to the abuse or neglect of a vulnerable adult.	Michael Henderson
<u>RS24307</u>	Relating to shelter care hearings under the Child Protective Act	Michael Henderson
<u>RS24473</u>	Relating to unmarked patrol cars	Teresa Baker, ISP

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 15, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the Committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee to order at 1:34 p.m.

MINUTES APPROVAL **Senator Souza** moved to approve the Minutes of January 27, 2016. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Lee** moved to send the Gubernatorial appointment of Jeffrey A. Betts to the Sexual Offender Management Board to the floor with recommendation that he be confirmed by the Senate. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Anthon** moved to send the Gubernatorial appointment of William Dale Crawford to the Sexual Offender Management Board to the floor with recommendation that he be confirmed by the Senate. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Lee** moved to send the Gubernatorial appointment of Matthew Allen Thomas to the Sexual Offender Management Board to the floor with recommendation that he be confirmed by the Senate. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Burgoyne** moved to send the Gubernatorial appointment of Moira A. Lynch to the Sexual Offender Management Board to the floor with recommendation that she be confirmed by the Senate. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Jordan** moved to send the Gubernatorial appointment of Michael David Johnston to the Sexual Offender Management Board to the floor with recommendation that he be confirmed by the Senate. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Senator Johnson** moved to send the Gubernatorial appointment of Erwin L. Sonnenberg to the Sexual Offender Management Board to the floor with recommendation that he be confirmed by the Senate. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 24289

Michael Henderson, Legal Counsel for the Supreme Court, reported that this legislation is to correct defects in the law. It makes the statutes gender neutral and addresses provisions regarding name changes, including who can petition for a name change for a minor. It also specifies the relatives of the minor who must be notified. **Mr. Henderson** indicated that the changes will provide a clear procedure for changing the name of a minor and will ensure that interested individuals will have an opportunity to bring their concerns to the court. The Committee members expressed a number of concerns, including the definition of "near relative" and "friend." They felt the language is still ambiguous, and although the legislation makes a great deal of progress in making necessary adjustments, the language still needs some work.

MOTION:

Senator Nonini moved to return **RS 24289** to the sponsor. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

DISCUSSION:

Senator Davis recommended that Mr. Henderson strike the "non-relative or friend." He also requested the issue of emancipated minors be addressed. **Senator Burgoyne** commented that there may be situations where "non-relative or friend" should remain, and he suggested involving magistrate judges to assist in rewriting this document. **Mr. Henderson** assured the Committee that he will take this RS back for revisions and request that magistrates and others who work with children review the document to see if "non-relative or friend" should be kept in statute. He will also have these groups consider emancipated minors.

RS 24138

Michael Henderson, Legal Counsel for the Supreme Court, brought **RS 24138** before the Committee.

MOTION:

Senator Davis moved to print **RS 24138**. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

RS 24307

Michael Henderson, Legal Counsel for the Idaho Supreme Court, explained **RS 24307** was proposed by the Supreme Court based on a recommendation of its Children and Families in the Courts Committee. The legislation makes several improvements to the Child Protective Act (CPA). These improvements address

1. shelter care,
2. redispotion hearings,
3. educational stability for children in foster care,
4. the use of psychotropic drugs used for foster children,
5. connections between and among siblings,
6. transition plans for youth,
7. rights of foster youth,
8. disruptions in child protection cases and placement of Indian children,
9. and the definition of a protective order.

Mr. Henderson explained that one of the main purposes of this legislation is to bring provisions of the CPA into alignment with federal provisions. If these changes are not made, Idaho may lose federal funding. He emphasized that if the RS is sent to print, when it is heard in Committee there will be presenters with more in-depth information than he can provide. **Senator Davis** inquired about the definition of foster care provider using the term "person" instead of "individual," and if a facility could be the appointed foster care provider. **Mr. Henderson** replied that it is his understanding that the provider would be an individual.

**PASSED THE
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

Senator Souza expressed concern that some of these provisions may place an undo burden on the placement process. **Mr. Henderson** felt the changes would not delay the placement.

MOTION: **Senator Davis** moved to print **RS 24307**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24473 **Teresa Baker**, Idaho State Police (ISP), introduced Lt. Colonel Kedrick Wills, Deputy Director, ISP, to present this RS.

Lt. Colonel Wills reminded the Committee that ISP had brought an RS previously this session but it needed a change in language. **RS 24473** changes the reference for unmarked cars from "vehicles," which could be interpreted to mean all vehicles, to "patrol cars." **Senator Jordan** asked how many total ISP cars there are, including patrol cars and those used for other purposes, and what percentage would be unmarked vehicles. **Lt. Colonel Wills** replied that he does not have those figures exactly but there are about 300 total vehicles. He added that the intent of this legislation is for patrol purposes, and the others are not being used for patrol. **Senator Burgoyne** inquired if the unmarked vehicles used for confidential investigation purposes could be used for patrol. **Lt. Colonel Wills** declared that they are equipped differently and do not have enough lighting to be used for patrol. **Senator Souza** related that she has received concerns from the public regarding the unmarked cars, some of whom believe this plan is simply to increase the revenue for ISP through fines. **Lt. Colonel Wills** assured the Committee that, although he does not know where the funds go, fines that are collected do not go into the operating fund of ISP. **Senator Jordan** asked how ISP will deal with conflicts that may arise with local jurisdictions where there are no provisions for unmarked cars. **Lt. Colonel Wills** stated that ISP is not aware of any jurisdictions with policies that prohibit the use of unmarked cars. He explained that they could discuss that issue with the local jurisdictions should the situation arise. **Senator Davis** asked if unmarked patrol vehicles are really necessary. **Lt. Colonel Wills** replied that they are, based on the numbers over the last three years of 350 fatalities and 2,000 serious injuries due to aggressive driving. Aggressive drivers will be the targets for the unmarked cars. He advised that there are 35 states that use unmarked cars for this purpose, as well as many agencies within Idaho.

Senator Burgoyne stated that he is skeptical of the legislation, but that ISP should have the opportunity to put this before the public.

MOTION: **Senator Burgoyne** moved to print **RS 24473**. **Senator Souza** seconded the motion. The motion carried by **voice vote** with **Senator Anthon** requesting to be recorded as voting nay.

Senator Johnson indicated that he visited with constituents who have concerns that he will share when the bill is heard in Committee.

PASSED THE GAVEL: Vice Chairman Nonini passed the gavel back to Chairman Lodge.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:32 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 17, 2016

SUBJECT	DESCRIPTION	PRESENTER
Presentation	Page Farewell	Chairman Lodge
Presentation	Boise Rescue Mission programs and how they complement Justice Reinvestment.	Rev. Bill Roscoe
<u>RS24048</u>	Regarding restoration of firearms	Sandy Jones, Executive Director, Commission of Pardons and Parole
<u>RS24357</u>	Regarding allegations of a violation of the conditions of parole.	Senator Patti Anne Lodge
<u>S 1235</u>	Relating to juvenile corrections	Sharon Harrigfeld, Director, Department of Juvenile Corrections
<u>S 1256</u>	Relating to motor vehicle financial responsibility	Senator Grant Burgoyne
<u>S 1255</u>	Relating to investigations against county elected officers	Senator Jim Rice
Minutes Approval	January 29, 2016	Senator Abby Lee and Senator Maryanne Jordan

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 17, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

PAGE FAREWELL: **Chairman Lodge** invited Aleena Follette to the podium and commended her on providing outstanding support to the Committee during her time here as a page. **Ms. Follette** then shared with the Committee her plans for the future.

PRESENTATION: **Reverend Bill Roscoe**, Director of the Boise Rescue Mission (BRM), stated that the BRM was established in 1958; its mission is to provide for the necessities of homeless and hungry people, while teaching them how to apply Biblical principles to their lives. The BRM supports the Justice Reinvestment Initiative (JRI) and offers projects to further the JRI's goals. The BRM provides programs to assist individuals on probation or parole to remain in compliance with their requirements. **Reverend Roscoe** emphasized that the BRM has rules of conduct with 24-hour professional and staff supervision. All participants are advised that the BRM cooperates with the Commission of Pardons and Parole and other law enforcement agencies. He identified three specific programs that work in cooperation with the criminal justice system to help reduce recidivism: the New Life Recovery Program, the Accountability Program and the Job Search Program. **Reverend Roscoe** detailed other services provided, such as transitional programs for veterans and for individuals going through the process to receive Social Security benefits, mental health care and children's programs. He reported that in 2015 more than 460 people made the transition from a Mission program to independent living. Currently almost 200 people staying at one of the Mission's facilities are working, saving and looking forward to independent living.

INTRODUCTION: **Chairman Lodge** introduced Senator John McGee, who previously served on the Senate Health and Welfare Committee.

RS 24048

Sandy Jones, Executive Director of the Commission of Pardons and Parole (Commission), pointed out that historically restoration of gun rights has been part of the pardon process. Idaho Code § 20-213A already allows for pardon and commutation applications to be reviewed in executive session; this legislation will add firearms restoration to the statute. **Ms. Jones** explained that Idaho Code § 18-310 establishes a separate set of circumstances for restoration of firearms rights for individuals who have been convicted of certain felonies. She then detailed the application process for the restoration of firearms rights. The Attorney General's office advised the Commission that the process for those who have been convicted of those specific felonies be put into rule. **Ms. Jones** reported that it was added to rule during the 2015 Legislative Session. This legislation will clarify the process in statute.

Senator Souza asked if the initial screening is done in executive session and then followed up in open session. **Ms. Jones** answered that it is.

Senator Davis questioned the language of the bill as it relates to the Open Meeting Law. An extensive discussion ensued, with **Senators Burgoyne, Anthon** and **Souza** also expressing concerns about the language of the bill and the application of the Open Meeting Law to this process.

MOTION:

Senator Nonini moved to return **RS 24048** to the sponsor. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 24357

Kanoa Gordon, Intern, explained that **RS 24357** proposes to amend Idaho Code § 20-229B, responding to a key goal of the JRI that provides for the Commission of Pardons and Parole to be given the ability to impose swift and uniform sanctions when a parolee violates the conditions of parole. **Mr. Gordon** pointed out that when the referenced code was instituted it established that a first-time parole violation would result in incarceration for ninety days and a second-time parole violation would result in incarceration for 180 days. This procedure promoted uniformity in response to parole violations, but a concern arose regarding a parole violation through an act that is violent or sexual in nature. **Mr. Gordon** expressed that if the 90/180 sanctions are automatically used, the parolee who has committed the sexual or violent crime would receive a consequence that is not commensurate with the violation. This, he said, poses a possible danger to the public.

MOTION:

Senator Davis moved to print **RS 24357**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1235

Sharon Harrigfeld, Director, Department of Juvenile Corrections, explained that the proposed amendment to Idaho Code § 20-511 clarifies the process for granting informal adjustments to juveniles and aligns the Code with common practice. It allows juveniles to admit the allegations at any time in the proceedings, rather than only at the initial stage. It also aligns with common practice some additional procedures and reporting processes.

Senator Anthon inquired about a record of the juvenile making admission if there is not a formal admit/deny hearing. **Ms. Harrigfeld** referred the question to Marc Crecelius, Deputy Attorney General. **Marc Crecelius** explained that there is a record made in the juvenile proceedings and the judge would take a plea. The court would make a record at that time.

Senator Souza expressed concern that the court's discretion could potentially be taken away by changing "may" to "shall." **Ms. Harrigfeld** replied that there is an "if" clause that explains the discretionary actions of the court.

MOTION: **Senator Anthon** moved to send **S 1235** to the floor with a **do pass** recommendation. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

S 1256 **Senator Burgoyne** informed the Committee that **S 1256** will raise the current fine of \$75 to \$300 for the infraction of not carrying auto insurance. He explained that there is an error and that the bill should go to the 14th Order for amendment. **Senator Burgoyne** went on to explain how not having proof of insurance is addressed as opposed to not having insurance. In reference to the increase in fine, **Senator Burgoyne** advised that the \$75 fine has been in place for many years and at that time the infraction limit was \$100. That limit has been changed to \$300. In analyzing the consequences that can occur when drivers do not have insurance, he felt this amount is appropriate. He detailed what the impact would be on the violator and expressed the serious consequences that can be visited upon victims of accidents caused by an uninsured driver.

Senator Davis stated that \$300 was a lot. He inquired what Senator Burgoyne felt about the high amount. **Senator Burgoyne** responded that although he understands and sympathizes with those people in society who are less fortunate than others, social inequity is not a valid basis for cheating the system and being irresponsible. **Senator Davis** inquired what the fine is in surrounding states. **Senator Burgoyne** replied that he did not know.

TESTIMONY: **Chryssa Rich** spoke in favor of **S 1256**. She related her experience when she was hit from the rear by an uninsured driver. She reported that after the individual drove without insurance, provided an officer with a fake address, lied to an officer, attempted to commit insurance fraud, lost in small claims court and defied court orders, she paid only \$75. She did reimburse Ms. Rich for her \$500 deductible, but only after much effort by Ms. Rich over a six-month period. The total that the at-fault driver paid was less than one year's insurance premium.

Senator Lee asked if Ms. Rich had only had liability insurance, would she have had a deductible. **Ms. Rich** stated that her medical would have been covered but not the extensive auto damages.

MOTION: **Senator Davis** moved to send **S 1256** to the 14th Order for possible amendment. **Senator Lee** seconded the motion.

Senator Johnson suggested that the bill be amended to say "up to \$300," allowing some flexibility.

Senator Davis indicated support for the bill, explaining that he has seen a number of cases where recipients of tickets for driving without insurance admitted that it was an intentional decision to do so.

Senator Souza stated that she could not support the amount because it is such a dramatic increase. She felt that even \$300 would not be a deterrent for those wanting to challenge the system, and that it would cause a serious financial burden to those who can't afford the insurance.

The motion carried by **voice vote**.

S 1255

Senator Rice observed that **S 1255** makes some changes to legislation that was passed two years ago regarding preliminary investigations of county elected officials by the Attorney General's office. Prior to that time only the County Prosecutor could investigate county elected officials, but he is their attorney. **Senator Rice** explained that in applying that legislation over the last two years, some problems were revealed. This legislation will remedy those issues by keeping investigations dealing with criminal law with the Attorney General's Office and relieving the Attorney General of becoming involved in county civil matters.

MOTION:

Senator Johnson moved to send **S 1255** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Lee moved to approve the Minutes of January 29, 2016. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:03 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 22, 2016

SUBJECT	DESCRIPTION	PRESENTER
INTRODUCTION	Page Introduction: Cardston Stanford	
Minutes Approval:	February 1, 2016	Senator Johnson and Senator Nonini
Gubernatorial Appointment Hearing	J. Philip Reberger was re-appointed to the Judicial Council for a term commencing July 1, 2015 and expiring July 1, 2021.	J. Philip Reberger
Gubernatorial Appointment Hearing	Anna Jane "Janie" Dressen was re-appointed to the Commission on Pardons and Parole for a term commencing January 1, 2016 and expiring January 1, 2019.	Anna Jane "Janie" Dressen
Gubernatorial Appointment Hearing	Cortney C. Dennis was appointed to the Commission on Pardons and Parole for a term commencing February 4, 2016 and expiring January 1, 2018.	Cortney C. Dennis
<u>RS24567</u>	Relating to inmates service projects	Senator Bert Bracket
<u>RS24566</u>	Relating to the guardian of a minor	Judge Barry Wood
<u>S 1253</u>	Relating to child protection and standards of care	Miren Unsworth
<u>S 1277</u>	Relating to sexual battery of an adult	Sara Thomas
<u>S 1276</u>	Relating to the civil rights of persons convicted of crime	Michael J. Kane

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 22, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

INTRODUCTION: **Chairman Lodge** introduced the new page, Cardston Stanford, to the Committee. **Mr. Stanford** shared with the Committee that he is from Sugar City and attends Madison High School. He stated that he was Lt. Governor of Boys' State, that he graduates this spring and that he will then serve a two-year LDS mission in Paris, France. The Committee welcomed Mr. Stanford.

ANNOUNCEMENT: **Chairman Lodge** advised the Committee that a report from Kevin Kempf, Department of Corrections, regarding justice reinvestment is available and asked that the members let the secretary know in what form they would like to receive it.

GUBERNATORIAL APPOINTMENT HEARING: **J. Philip Reberger** was reappointed as a non-attorney member of the Judicial Council, where he has served since 2003. **Mr. Reberger** commended the judiciary in Idaho on its work. He gave a summary of the process by which appointments are made. He emphasized that the legislatively mandated judicial appointment process is both valid and exceptionally effective. **Mr. Reberger** observed that the quality, quantity, diversity and strong sense of public commitment of applicants has improved. He identified other areas in which he has worked, including dealing with a diminishing number of complaints and the very few serious disciplinary actions that have been taken regarding the judiciary. **Senator Burgoyne** pointed out that statute sets forth the requirement that not more than three of the appointed members be from one political party. He asked if that is being followed. **Mr. Reberger** stated the requirement is being followed. **Senator Burgoyne** inquired if Mr. Reberger is in compliance with the statute stating that no permanent member may hold any position for profit with the United States or the State. **Mr. Reberger** replied that he is in compliance. **Senator Burgoyne** then asked what Mr. Reberger perceived as making a good judge. **Mr. Reberger** declared that paramount would be a passion for the rule of law. The ability to communicate effectively is very important.

GUBERNATORIAL APPOINTMENT HEARING: **Anna Jane "Janie" Dressen**, reappointed to the Commission of Pardons and Parole (Commission), explained that she is an Idaho girl with ancestors and progeny being Idahoans. She is committed to the welfare of the State. **Ms. Dressen** summarized her background stating that she has served on the Commission since 1998, retired in 2006, was again appointed to the Commission in 2009 and has been serving since then.

Senator Burgoyne asked about the statutory qualification that not more than three persons from any one party be on the Commission. He inquired if the balance will be maintained with her appointment and noted that she is an Independent. **Ms. Dressen** answered that he is correct. She then invited the Committee members to come to a hearing.

Chairman Lodge solicited her viewpoint regarding the Justice Reinvestment Initiative (JRI). **Ms. Dressen** disclosed that there had been some concerns but, having been implemented for a year, she felt that the guidelines have proven to be working well. There are still some concerns about the sanctions, but those concerns are in the process of being addressed.

**GUBERNATORIAL
APPOINTMENT
HEARING:**

Courtney C. Dennis, appointed to the Commission of Pardons and Parole, detailed her background working with the Ada County Sheriff's Office, as well as her educational and employment background prior to working for the sheriff's office. She left the sheriff's office in January of 2016 and sees this appointment as an opportunity to continue to positively contribute to the Idaho justice system. She informed the Committee that she has deep roots in Idaho spanning five generations. When **Ms. Dennis** considered this opportunity, she spent time learning what would be expected. She is confident that qualities she possesses, including the ability to remain calm in difficult situations and to make decisions based on facts rather than emotions, will serve her well as a commissioner. She stated that she supports the JRI and the mission of the Pardons and Patrol Commission. **Ms. Dennis** concluded by emphasizing that her personal qualities, background and experience will make her a valuable member of the Commission.

Senator Davis asked Ms. Dennis if she sought the position or if she was contacted. **Ms. Dennis** replied that she sought the position after hearing about it from the Director of the Commission of Pardons and Parole and then researching the responsibilities involved. **Senator Davis** inquired how Ms. Dennis knew the Director. **Ms. Dennis** answered that they both worked for the Ada County Sheriff's Office. **Senator Davis** also asked if she has ever been elected or appointed to a position in the State. **Ms. Dennis** responded that she has not.

Senator Burgoyne inquired about the extent of knowledge of the law that was needed as a member of the county zoning commission. **Ms. Dennis** explained that the commission does the initial work and then the commission's legal counsel addresses any legal issues involved. **Senator Burgoyne** inquired what in her background would be beneficial in this position. She enumerated several personal qualities that she has developed and described her educational background. **Ms. Dennis** related her experience teaching criminal justice courses and stated that she had Police Officers Standards and Training (POST) certifications for dispatching and communications.

**MINUTES
APPROVAL:**

Senator Johnson moved to approve the Minutes of February 1, 2016. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Chairman Lodge passed the gavel to Vice Chairman Nonini.

RS 24567

Chairman Lodge explained that this bill simply adds "or community service projects" to the list of labor opportunities inmates in a county jail may be allowed to perform. Currently under Idaho Code § 20-617 it is legal for inmates to perform labor on federal, state and other governmental projects.

Senator Burgoyne suggested that because we have community service being done now, this legislation is to ensure that what we are doing is lawful. **Chairman Lodge** pointed out that this would extend work projects to assist the elderly and disabled. She also explained that the inmates are covered by workman's compensation.

MOTION: **Senator Burgoyne** moved to send **RS 24567** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nonini passed the gavel back to Chairman Lodge.

RS 24566 **Michael Henderson**, Legal Counsel with the Idaho Supreme Court, stated that this bill corrects an omission in the law modifying statutes addressing guardianships. When a child has a guardian, and is not a ward of the court, there are times when that guardianship needs to be terminated. There is nothing in statute to address this issue. This legislation would amend Idaho Code § 15-5-212 and Idaho Code § 15-5-210 by providing for interested parties to petition to have a guardianship terminated if they believe it is in the best interest of the child.

MOTION: **Senator Nonini** moved that **RS 24566** be sent to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1253 **Miren Unsworth**, Deputy Administrator of the Department of Health and Welfare's Division of Family and Community Services (Division), explained that in order to allow foster children to participate in various activities that require parental permission, this bill will amend the Child Protective Act, Idaho Code § 16-1602, by adding definitions of "caregiver" and "foster parent." A new section, Idaho Code § 16-1644, limits the liability of caregivers who enroll foster children in activities, so long as they apply a "reasonable and prudent parent" standard. She reported that the Division has received positive feedback for this bill from foster parents. **Senator Burgoyne** asked if there is any opposition because this legislation might impinge on parental rights. **Ms. Unsworth** replied that she has not heard anything from advocacy groups or parents.

MOTION: **Senator Burgoyne** moved to send **S 1253** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1277 **Sara Thomas**, State Appellate Public Defender and Chair of the Idaho Criminal Justice Commission (Commission) explained that **S 1277** is a bill that comes through a subcommittee of the Commission. At the request of the Governor, the Commission examined whether or not Idaho's sex crimes statutes in Idaho are adequate. **Ms. Thomas** detailed the process used and the stakeholders involved in the analysis. Paul Panther was the chairman of the subcommittee.

Paul Panther, Deputy Attorney General and Chief of the Criminal Law Division, pointed out that the subcommittee identified several areas of the rape statute that needed attention. The areas of concern deal with the amount of resistance offered by the victim, neutral language and emotional or mental status of the victim. A lengthy discussion ensued regarding the nature of rape. **Mr. Panther** explained the considerations given to the sexual battery of an adult, including definition, level of the crime as a misdemeanor, the fine and other consequences involved. More discussion followed relating to the various sections of **S 1277**.

MOTION: **Senator Davis** moved to send **S 1277** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1276 **Michael Kane**, Idaho Sheriffs Association, stated that this bill is supported by the Idaho Prosecuting Attorneys Association and the Chiefs of Police Association. Idaho Code § 18-310 provides that felons who commit egregious crimes cannot, after completing their sentence, ship, transport, possess or receive firearms. This bill will amend the code to add the following crimes that have been created since the original passage of the law or were overlooked when the original bill was enacted:

- terrorism,
- arson in the first or second degree,
- theft by extortion,
- human trafficking,
- felony riot,
- hijacking,
- racketeering and
- supplying firearms to a criminal gang.

Senator Souza explained that there have been concerns expressed by her constituents regarding the term "terrorism." She asked Mr. Kane to define the term. **Mr. Kane** replied that he cited the Idaho Code sections that define terrorism. **Senator Souza** asked specifically about domestic terrorism. She inquired if there could be a misuse of the term "terrorism" when dealing with people from the conservative mindset who might be taking some action but do not cause bodily harm or any serious danger. **Mr. Kane** commented that after many years of experience in serving as attorney in criminal cases, he cannot think of any times when the concept of terrorism would apply to the situations to which Senator Souza is referring. **Senator Souza** requested assurance that the crime must involve a violent action in order to be considered terrorism.

Senator Jordan requested clarification regarding whose firearms rights would be revoked and asked if it would just apply to people who have been convicted of and served sentences for these specific charges. **Mr. Kane** responded yes.

MOTION: **Senator Jordan** moved to send **S 1276** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, the meeting was adjourned at 3:00 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Wednesday, February 24, 2016

SUBJECT	DESCRIPTION	PRESENTER
Minutes Approval	February 15, 2016, Minutes	Senators Burgoyne and Anthon
Vote on Gubernatorial Appointment	J. Philip Reberger, Judicial Council	
Vote on Gubernatorial Appointment	Cortney C. Dennis, Commission on Pardons and Parole	
Vote on Gubernatorial Appointment	Anna Jane "Janie" Dressen, Commission on Pardons and Parole	
<u>RS24151</u>	UNANIMOUS CONSENT REQUEST from the Commerce and Human Resources Committee relating to suppliers changing the dealer's competitive circumstances without good cause.	Roger Batt
<u>RS24371</u>	UNANIMOUS CONSENT REQUEST from the Commerce and Human Resources Committee relating to rental and demonstration equipment.	Roger Batt
<u>RS24570</u>	Relating to requirements for rules reviews	Senator Jim Rice
<u>RS24540</u>	Relating to the cost of public defense services for indigent individuals	Senator Todd M. Lakey
<u>RS24496</u>	Relating to increasing enforceability of judgments.	Senator Bart Davis
<u>SCR 142</u>	Relating to Statements of Purpose and Fiscal Notes	Senator Bart Davis
<u>SCR 143</u>	Relating to the transmittal of a joint resolution	Senator Bart Davis
<u>SCR 144</u>	Relating to certain recorded proceedings	Senator Bart Davis
<u>SR 101</u>	Relating to a committee chair's decision	Senator Bart Davis

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, February 24, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the Minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the minutes of February 15, 2016. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Nonini** moved to send the Gubernatorial appointment of J. Philip Reberger to the Judicial Council to the floor with recommendation that he be confirmed by the Senate. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Lee** moved to send the Gubernatorial appointment of Cortney C. Dennis to the Commission of Pardons and Parole to the floor with recommendation that she be confirmed by the Senate. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Nonini** moved to send the Gubernatorial appointment of Anna Jane "Janie" Dressen to the Commission of Pardons and Parole to the floor with recommendation that she be confirmed by the Senate. **Senate Jordan** seconded the motion. The motion carried by **voice vote**.

DISCUSSION: **Senator Jordan** requested clarification on action on a Unanimous Consent Request from another Committee. **Chairman Lodge** explained the purpose and the procedure.

RS 24151 **Senator Davis** moved to print **RS 24151**, a Unanimous Consent Request from the Commerce and Human Resources Committee. **Senator Nonini** seconded the motion. The motion carried by **voice vote** with **Senator Burgoyne** and **Senator Jordan** asking to be recorded as voting nay. **Senator Burgoyne** expressed his reasons for opposing the legislation.

RS 24371 **Senator Davis** moved to print **RS 24371**, a Unanimous Consent Request from the Commerce and Human Resources Committee. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

Because the presenters for **RS 24570** and **RS 24540** had not yet arrived, **Chairman Lodge** advised that the Committee would move on in the agenda to **RS 24496**.

- RS 24496** **Senator Davis** explained that this bill increases from five to ten years the period of time a renewed judgment on a lien may be continued.
- MOTION:** **Senator Johnson** moved to print **RS 24496**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
- SCR 142** **Senator Davis** related to the Committee that this bill is brought jointly by the majority and minority leadership. He pointed out that in this amendment to Joint Rule 18, the Statement of Purpose and the fiscal note are addressed separately. He indicated that the major change deals with the fiscal note and the frequent claim that there would be no fiscal impact. **Senator Johnson** and **Senator Davis** discussed the basis of the fiscal note. **Senator Johnson** mentioned that there could be an increase or decrease in fiscal impact. **Senator Davis** replied that the note was for the coming fiscal year. He stated that Idahoans deserved to know some consideration has gone into the fiscal impact, whether it is positive or negative.
- MOTION:** **Senator Nonini** moved to send **SCR 142** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.
- RS 24570** **Senator Jim Rice** expressed concern regarding the inaccurate or incomplete information given when rules are changed. This legislation would require a statement of substantive changes when applying for the change.
- MOTION:** **Senator Souza** moved that **RS 24570** be sent to print. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.
- RS 24540** **Senator Lakey** told the Committee that this legislation provides for counties to cover the cost of public defense services for indigent individuals out of the justice fund, the current expense fund or the indigent fund. In addition, the State will provide grants to assist the counties in this effort.
- MOTION:** **Senator Burgoyne** moved that **RS 24540** be sent to print. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.
- SCR 143** **Senator Davis** related that this bill amends **Joint Rule 20** and clarifies the process of transmitting bills when the fifty-fifth day of the legislature falls on a weekend. Under this revision, the transmittal must be made on or prior to the fifty-seventh day of the session.
- MOTION:** **Senator Burgoyne** moved that **SCR 143** be sent to the floor with a **do pass** recommendation. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.
- SCR 144** **Senator Davis** explained that this bill deals with maintaining records of the Legislature. Currently the audio and video recordings are maintained in the Legislature for two years on the website and then transferred to another entity. This bill will provide for the recordings to be transferred to the archives after the two-year period, where they will be maintained for posterity.
- MOTION:** **Senator Nonini** moved to send **SCR 144** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

SR 101

Senator Davis pointed out that historically the decision of the committee chairman was final and could not be appealed, but there is nothing in the Senate rules that substantiates this practice. The purpose of the legislation is to add words making the rules consistent with current practice. This change will include witness testimony and decorum.

Senator Burgoyne indicated that he would not support this bill as a matter of principle. He emphasized that in a democratic society there should be a form of appeal.

Senator Johnson asked if this language was consistent with Mason's Manual of Legislative Procedure. A discussion ensued comparing legislative practice, Mason's Manual and Robert's Rules of Order. **Senator Davis** observed that in the Idaho Legislature most work together to rectify problems, and there is seldom a case where an appeal is considered.

MOTION:

Senator Nonini moved to send **SR 101** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion passed by **voice vote** with **Senator Burgoyne** and **Senator Jordan** requesting to be recorded as voting Nay.

Senator Jordan commented that legislators want to do work that would not need an appeal, but that doesn't always happen and there should be some recourse.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:20 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, February 26, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approve minutes of February 3 meeting	Senator Jordan and Senator Lee
<u>S 1351</u>	Related to labor of prisoners on public works	Senator Bert Brackett
<u>S 1327</u>	Relating to vulnerable adults	Michael Henderson
<u>S 1328</u>	Relating to the child protective act	Michael Henderson
<u>S 1352</u>	Relating to omissions in the statutes relating to guardianships	Michael Henderson
<u>H 461</u>	Relating to surcharge fees to be deposited in the general fund	Sr. District Judge Barry Wood
<u>S 1343</u>	Relating to allegations of a violation of the conditions of parole	Senator Lodge and Kanoa Nol

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge	Sen Lee
Vice Chairman Nonini	Sen Anthon
Sen Davis	Sen Burgoyne
Sen Johnson	Sen Jordan
Sen Souza	

COMMITTEE SECRETARY

Carol Cornwall
Room: WW48
Phone: 332-1317
email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, February 26, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Jordan** moved to approve the minutes of February 23, 2016. **Senator Nonini** seconded the motion. The motion passed by **voice vote**.

S 1351 **Senator Bert Brackett** stated that this legislation adds "community service projects" to the list of possible opportunities for which persons being confined in a county jail may be required to perform labor. Currently those persons may be required to perform labor on federal, state or other governmental projects. This bill amends Idaho Code to add "community service projects" such as maintenance or clean up of elderly or disabled homeowners' property within the county. Commissioners were told by their county attorneys that it was not allowed under Idaho Code.

Senator Jordan asked where in the statute community projects were defined. She added that inmates should not be working in areas where children may be involved. **Senator Brackett** turned the question to Michael Kane, Idaho Sheriffs Association. **Mr. Kane** stated that there wasn't a definition in statute. He assured her that people who were "Hard-Timers" would not be taken out of the jail and sent to work in sensitive environments. The Sheriff's Inmate Labor Detail is a program where people volunteer rather than spend time in jail. A county community service coordinator is assigned to work with those people who are providing community service. Coordinators would be able to match the right prisoner to the right task.

Commissioner Wes Wootan, Elmore County, stated that county lawyers were telling the county that they can't let the inmates serve the public. This service is not for people who can afford to take care of their own property. It is for those who are not able to perform certain tasks themselves.

Dan Blocksom, Analyst, Idaho Association of Counties, indicated that counties do not have an official position, but he expects that they will be supporting it.

MOTION: **Senator Burgoyne** moved to send **S 1351** to the floor with a **do pass** recommendation. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

S 1327

Michael Henderson, Legal Counsel with the Idaho Supreme Court, stated that this bill addresses a defect in the law under article V, section 25, of the Idaho Constitution relating to the abuse and neglect of a vulnerable adult. The offense is a felony if the abuse or neglect is likely to produce great bodily harm or death; otherwise, it is a misdemeanor. The statute defines "neglect" as a failure of a caretaker to provide certain basic needs "in such manner as to jeopardize the life, health and safety of the vulnerable adult." The conjunction "and" means that proving neglect requires showing that the life of the vulnerable adult was jeopardized, in addition to his or her health or safety. This bill would correct the statute, allowing consideration of each qualifier on its own merit by changing "and" to "or." This legislation will cover most of the cases of neglect of the vulnerable adults that come before the courts.

Senator Burgoyne brought up his concern with the term "neglect" in the context of subsection 1 and stated that there needs to be a clear definition of what conditions would result in a misdemeanor or a felony in terms of the definition of "neglect."

MOTION:

Senator Anthon moved to send **S 1327** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1328

Mr. Henderson introduced Senior Judge Lynn Krogh, and stated that Judge Krogh would present **S 1328**.

Lynn Krogh, Magistrate Judge, stated that this bill would make the following improvements to the Child Protective Act: 1.) Clarify the possible outcomes at shelter care hearings. 2.) Clarify the procedure for redispotion hearings. 3.) Promote education stability for children in foster care by requiring the Department of Health and Welfare (DHW) to report and the court to inquire about efforts to maintain foster children in the same school. 4.) Address concerns about treatment of children in foster care with psychotropic drugs by requiring DHW to report and the court to inquire when foster children are receiving treatment with psychotropic drugs. 5.) Promote connections between siblings, requiring DHW to report and the court to inquire about efforts to place siblings in the same foster home, or efforts for visitation among siblings in different foster placements, unless joint placement or visitation is not in the best interest of one or more of the siblings. 6.) Clarify that DHW is to prepare a transition plan for assisting the youth with the transition to successful adulthood beginning at age 14. 7.) Require DHW to inform foster youth about their rights. 8.) Provide for the court to ask foster youth about their desires regarding permanency. 9.) Promote outcomes for foster youth 16 and older who have a permanency goal of another permanent planned living arrangement by encouraging enrichment activities and clarifying DHW's duty to make efforts to finalize a more permanent goal for youth. 10.) Avoid disruptions in child protection cases and placement of Indian children by requiring DHW to report and the court to make findings about DHW's efforts to identify Indian children as early as possible in a child protection case. 11.) Amend the definition of a protective order to clarify that protective orders are not limited to orders issued prior to an adjudicatory hearing.

Judge Krogh stated that the proposed amendments were drafted by the Child Protection Committee (CPC), established in 1998. The CPC represents a broad range of parties involved in the placement of children in foster care. The proposed amendments were designed to implement practices that are in the best interests of the children involved. The first three sections of the handout she distributed address information that DHW is to provide to the courts, inquiries that the courts are to make regarding child protection cases and findings that the court are required to make (see attachment 1). The handout lists the issue, the hearings at which these changes are made and whether the change is to document, to make an inquiry or to make a finding. The fourth section addresses miscellaneous issues that will make the bill clear.

Judge Krogh indicated that a big issue is psychotropic medications given to foster children. Forty-three percent of foster kids in Idaho are being treated with psychotropic medications, compared to 14 percent of children generally. There is no information to support the conclusion that there are mental health issues in foster children at four times the rate of children in general in Idaho. Drugs are often prescribed by those who do not specialize in the treatment of mental health disorders. These drugs may be prescribed even though the effects on children are unknown, and the drugs are sometimes being prescribed for purposes other than those indicated on the label. Anti-psychotics are the most commonly prescribed and are often given to kids who are not diagnosed with a psychotic disorder; the medication is perceived as working because it has a chemical restraint (see attachment 1). The CPC's proposal to help address this problem is that at every review and permanency hearing, DHW will report if a child is being prescribed psychotropic meds, and if so, what, how much and by whom. To help the Committee understand the reasoning behind this legislation, Judge Krogh explained the procedure used to analyze the drug prescription situation and to direct a remedy when a problem is found. She then gave an overview of the process in a child protection case (see attachment 2).

Judge Krogh went on to indicate that part of the reason for the changes being requested is a result of federal legislation that includes the Sex Trafficking and Strengthening Families Act and the Fostering Connections Act. The changes, identified as a result of the federal laws, fall into the following specific categories: 1.) Transition to Successful Adulthood (from the Sex Trafficking Act). 2.) Youth's rights (from the Sex Trafficking Act). 3.) Youth's desires as to permanency (from the Sex Trafficking Act). 4.) Another Planned Permanent Living Arrangement (APPLA) (from the Sex Trafficking Act). 5.) Siblings (from the Foster Connections Act). 6.) Educational Stability (from the Fostering Connections Act) (see attachment 1).

Senator Davis, Senator Johnson, Judge Krogh and Michael Henderson discussed the definition of "reasonable and prudent parent standard," the consistency of the language throughout all of the legislation being proposed and the appropriate path to follow to ensure consistencies.

The Bureau of Indian Affairs (BIA) has adopted new guidelines for implementing the Indian Child Welfare Act. The only change the CPC is proposing to the Idaho statute is to require the court, at every hearing, to inquire about the child's possible Indian status.

Other items included in this legislation relate to shelter care and distinguishing between a status hearing, a review hearing and a re-disposition hearing (see attachment 1).

Senator Lee and **Judge Krogh** discussed who has the final authority to determine what is appropriate medical treatment for a child in foster care. **Judge Krogh** indicated that ultimately the court has both the duty and the responsibility to do what is in the best interest of the child. When a child is placed in foster care, they are given several different kinds of tests, and the courts are made aware of their circumstances.

Senator Nonini asked if the foster parents initiate taking the child to the doctor or if the DHW makes that decision. **Judge Krogh** stated that in her experience it starts with the DHW. When children enter foster care, they get a health and developmental needs assessment. The DHW has the information necessary to make that determination.

Senator Davis stated that there were some minor grammatical or structural differences between **S 1253** and **S 1328** and that the Code Commission compilers could make those consistency adjustments. The Committee has to decide whether there are basic differences in the definitions even though they are the same in respect to purpose; the language doesn't read as such. His recommendation was to make those few changes and send the bill to the House.

Senator Lee asked what the DHW's response would be regarding the phrase "the court shall make an inquiry." **Chairman Lodge** asked Miren Unsworth, DHW, to respond. **Ms. Unsworth** stated that if a conflict about a medication arose, the judge would probably reschedule another hearing and invite a medical provider to participate in that hearing. The DHW generally complies when a judge issues an order. **Senator Davis** asked what was meant by "generally." **Ms. Unsworth** stated that the DHW may appeal a court order if they see sufficient need.

Senator Nonini asked what kind of relationship DHW had with the courts. **Ms. Unsworth** stated that the current legislation was a result of that relationship in which much positive collaboration had taken place.

MOTION: **Senator Johnson** moved to send **S 1328** to the amending order. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1352 **Mr. Henderson** explained that this bill would correct an omission in the statutes relating to guardianships. It will provide that a person interested in the welfare of a ward, or a ward who is at least 14, may petition the court for modification or termination of the guardianship on the grounds that such would be in the best interest of the ward. **S 1352** would fill a gap in the Idaho Code and provide guidance to all persons concerned in a guardianship.

MOTION: **Senator Lee** moved that **S 1352** be sent to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 461 **Senior District Judge Barry Wood**, Idaho Supreme Court, stated that this bill will amend two statutes under Idaho Code known as the "surcharge bill." This amendment seeks to direct the 80 percent now going to the Court's drug court fund into the General Fund. Section 2 of the bill provides that the drug court fund will no longer receive those surcharge monies. It is part of a larger piece of legislation that will restore funding to the drug court fund that was readjusted in the 2008, 2009 and 2010 recession. It will redirect the surcharge monies to the General Fund in return for another action from JFAC with respect to the drug court fund.

MOTION: **Senator Anthon** moved that **H 461** be sent to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1343

Kanoa Nol, Intern, explained that this bill is an amendment to Idaho Code § 20-229B and responds to a position of the Justice Reinvestment Initiative (JRI) that the Commission of Pardons and Parole hearing officer would have a more consistent sentencing guideline when the conditions of parole are violated by a parolee. The current guidelines call for a 90-day incarceration period for the first parole violation and a 180-day incarceration period for the second violation. Not addressed is the occurrence of a parole violation characterized by the parolee committing a new felony, a violent sexual crime or a violent misdemeanor. This bill allows the hearing officer to make a case-by-case adjudication of the individual and possibly determine if they should be incarcerated for a longer period of time.

Senator Davis shared a concern about the public policy of this bill. He questioned the dropping of the word "conviction," and suggested addressing the conduct of the violator. He was concerned that the hearing officer would be able to make a determination without there having been a formal adjudication of the violation. **Mr. Nol** explained that due process is followed. **Senator Davis** expressed further concerns regarding clarity in the language of the bill. **Senator Anthon** and **Senator Lee** also questioned some aspects of the bill.

MOTION:

Senator Nonini moved to hold **S 1343** until Monday, February 29, 2016. **Senator Nonini** withdrew his first motion and moved that **S 1343** be held to be heard at the call of the Chair. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:15 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary

Senate Bill 1328

2016 PROPOSED AMENDMENTS TO THE CHILD PROTECTIVE ACT

The proposed amendments were prepared by the Idaho Supreme Court Child Protection Committee. The committee was established in 1998 to improve practices in child protection cases, and ultimately, to improve outcomes for children in child protection cases. The committee has broad representation from the primary stakeholders in child protection cases, including a judge from each judicial district, the Idaho Department of Health and Welfare (IDHW), the Office of the Attorney General, prosecutors, public defenders, guardians *ad litem*, Native American Tribes, and the Casey Foundation. Depending on the issues the committee is working on, participants in the committee have included representatives from foster parent groups, foster youth groups, the Idaho Department of Juvenile Corrections, and others.

This degree of representation is important to ensure that the committee has both the broadest range of information and the broadest range of viewpoints available to it. A broad range of information and viewpoints is essential to the committee's efforts, which include identifying the issues the committee is going to tackle, identifying the options for addressing those issues, and selecting and implementing the options best suited to the needs and concerns of Idaho citizens.

The purpose of the proposed amendments is to implement best practices identified and/or developed by the committee. Part of the committee's work is to review best practices used in other jurisdictions or recommended by commentators in the various disciplines related to child protection. This includes practices required by recent federal legislation.

This is a summary of the issues addressed by the proposed changes. In the first three sections, IDHW is required to provide information to the court at certain phases of a child protection case, and/or the court is required to make inquiry and/or findings as to the issue at certain phases of the case. Each subsection below addresses a particular issue, lists the statute with recommended changes, and identifies when IDHW is required to document information to the court, when the court is required to make inquiry, and when the court is required to make findings. The fourth section addresses areas that warranted clarification or minor correction.

A. PSYCHOTROPIC MEDICATIONS

A recent study by the Casey Foundation found that 43% of foster kids in Idaho are prescribed psychotropic drugs, compared to 14% of children generally, but there is no information to support the conclusion that the incidence of mental health disorders is three times higher for foster kids than for kids generally. The drugs are often prescribed by general practitioners and nurse practitioners who do not specialize in the diagnosis or treatment of mental health disorders. The drugs have been approved for use in adults, and it is known that many of them have serious side effects, but very little is

known about the impact of these drugs on child or adolescent brain development. The drugs are often prescribed “off-label,” which means drugs that have been approved for the treatment of certain disorders are used for other purposes.

The most commonly used psychotropic medications are the antipsychotics, which are often prescribed for kids who have not been diagnosed with a psychotic disorder, but are perceived as effective because they have the side effect of serving as a chemical restraint (Risperdal, aka risperidone, is a common example). Another common problem is traumatized kids whose behavior is misdiagnosed as ADHD, and who are prescribed a stimulant (Ritalin). The stimulant drug has a calming effect on an ADHD kid, but not other kids. So the traumatized kid’s thinking is scattered by the corticosteroids produced by trauma, then further scattered by chemical stimulants, then they are sent to school and told to pay attention and do their homework. The list of potential problem situations goes on and on. The vast majority of these kids have no one with the wherewithal to ask the necessary questions to be an informed consumer, and to make the kind of informed treatment decisions that we would make for ourselves, our kids, or our parents.

So what do we do? No judge is going to go head-to-head with the doctor, and override a doctor’s decision. The proposal is that, at every review and permanency hearing, IDHW will report if a child is being prescribed psychotropic meds, and if so, what, how much, and by whom. The court can then ask anything the court wants to ask.

- 16-1619(7)(c) - adjudicatory hearing (court will inquire) – **pg. 9 (L. 5-12)**
- 16-1620(4)(c) - permanency hearing, agg circ (IDHW will document and court will inquire)- **pg. 11 (L. 34-40)**
- 16-1621(1)(c) - case plan – **pg. 12 (L. 42-44)**
- 16-1622(1)(a)(ix) – review hearing (document and inquire)- **pg. 17 (L. 29-36)**
- 16-1622(2)(j) – annual permanency hearing (document and inquire)-
pg. 19 (L. 45-49); pg. 20 (L. 1-2)

The rationale is that if the court starts asking questions, that will empower parents, foster parents and social workers to ask questions, and that might contribute to more informed decision-making by all concerned. In addition, the judges will hopefully discover options for further action, and share what they learn with others. Some options that come to mind are that the judge could require that IDHW take the child to a different medical service provider for a second opinion; the judge could require that IDHW take the child to a pediatric psychiatrist (there are only two in Idaho); the judge could ensure that the child is receiving services in addition to med management for mental health issues; or the process could be initiated for a children’s mental health commitment.

IDHW has a protocol for case workers with kids who are being treated with psychotropic meds, and it has some good basic elements. In addition, there is a bench card that offers judges guidance as to questions the judge might ask.

B. 2014 FEDERAL LEGISLATION: The Preventing Sex Trafficking and Strengthening Families Act, and the Fostering Connections Act

A recent study by the Casey Foundation found that, among foster children who age out of the system, more than half end up incarcerated or dead within one year. In addition, Idaho law enforcement agencies have compelling and horrific information as to the nature and extent of sex trafficking of children in Idaho. Improving outcomes for foster youth has been a major focus of child protection efforts in Idaho and nationwide. Both of the recent federal laws contain extensive provisions intended to improve outcomes for foster children, and particularly foster youth.

Both laws are directed primarily at state agencies, and compliance with both is necessary to maintain federal funding (over \$17 million last year). Members of the committee reviewed the laws in detail to identify only those changes to the Idaho statute that were necessary to maintain federal funding AND that the committee believes will improve outcomes for Idaho foster children, particularly foster youth. The further effort required by the courts is not burdensome. The further effort required by IDHW is substantial, but that effort is already required by federal law, and IDHW supports the proposed amendments. Implementing the proposed amendments will not have a direct impact on the general fund, but the failure to do so will result in the loss of funding desperately needed for work that we already do or need to do for Idaho foster children.

1. Transition to Successful Adulthood (from the Sex Trafficking Act)

“Transition to independent living” is now called “transition to successful adulthood,” and the age at which transition planning must start is 14 rather than 16. A transition plan must also be included in case plans (it was previously included in permanency plans). Although not required, the committee recommends it as a consideration at review hearings. The committee also recommends a review and/or permanency hearing 90 days prior to a youth aging out to address the transition plan.

16-1620(3)(h) – agg circ permanency plan (document in plan)- **pg. 10 (L. 31-39)**

16-1621(3)(a) – case plan- IDHW custody (document in plan) – **pg. 13 (L. 5-17)**

16-1621(3)(d)(vi) – concurrent plan (document in plan)- **pg. 14 (L. 25-49)**

16-1621(4)(a) – case plan - protective supervision (document in plan)-
pg. 15 (L. 5-18)

16-1622(1)(a)(v) – review hearing (review)- **pg. 16 (L. 34-39)**

16-1622(2)(a) and (e) – annual permanency hearing (document in plan by cross reference to contents of case plan, and make findings)- **pg. 18 (L. 12-33), (L. 45-49); pg. 19 (L. 1-2)**

16-1622(3) – review hearing prior to aging out- **pg. 20 (L. 7-15)**

2. Youth’s rights (from the Sex Trafficking Act)

For youth age 14 and older, the case plan must document that the youth was provided with information about his/her rights (education, health, visitation, court participation, receipt of annual credit report, including signed acknowledgement from IDHW that youth was provided with the information and it was explained in age or developmentally appropriate way).

16-1620(3)(h) – agg circ permanency plan- **pg. 10 (L. 31-39)**

- 16-1621(3)(a) – case plan (IDHW custody)- **pg. 13 (L. 5-17)**
- 16-1621(4)(a) – case plan (protective supervision)- **pg. 15 (L. 7-18)**
- 16-1622(2)(a) – annual permanency plan (included by cross-reference to contents of case plan)- **pg. 18 (L. 16)**

3. Youth's desires as to permanency (from the Sex Trafficking Act)

For youth age 12 and older, the court will inquire at review and permanency hearings as to the youth's permanency desires. (The federal statute requires this for youth with another planned permanent living arrangement (APPLA) as a permanency goal. The committee recommends that we do this for all youth 12 and older.)

- 16-1620(4)(a) – permanency hearing with agg circ- **pg. 11 (L. 22-25)**
- 16-1622(1)(a)(v) and (3) – review hearing- **pg. 16 (L. 34-39); pg. 20 (L. 7-15)**
- 16-1622(2)(e) – annual permanency hearing- **pg.18 (L. 45-49); pg. 19 (L. 1-2)**

4. Another Planned Permanent Living Arrangement (APPLA) (from the Sex Trafficking Act)

a. Limited to youth 16 and older

- 16-1620(2) – list of permissible permanency goals- **pg. 9 (L. 45-48)**
- 16-1622(2)(a) and (f) – list of permissible permanency goals- **pg. 18 (L. 16)**

b. Youth Activities/Reasonable and Prudent Parent

If the permanency goal is APPLA, the permanency plan must document the steps IDHW is taking to: (1) ensure that the foster parents or child care institution are following the reasonable and prudent parent standard when determining whether to allow the youth to participate in extracurricular, enrichment, and social activities, and (2) the opportunities provided to the youth to engage in age or developmentally appropriate enrichment activities. The impetus for this is that these youth often just get "housed," and don't get opportunities for the normal stuff that other youth get to do.

- 16-1602(34) – definition of reasonable and prudent parent- **pg. 5 (L. 28-34)**
- 16-1620(3)(i)(iii) and (iv) – permanency plan with agg circ- **pg. 11 (L. 4-10)**
- 16-1621(3)(d)(vii)(3) - concurrent plan- **pg. 14 (L. 43-47)**
- 16-1622(1)(a)(vi) – review hearing- **pg. 16 (L. 40-50)**
- 16-1622(2)(a) – annual permanency plan (by cross reference to the contents of a concurrent plan)- **pg. 18 (L. 16)**

d. Best Interest/Compelling Reasons (from the Sex Trafficking Act)

Before approving a permanency goal of APPLA, the statute currently requires the court to make written, case-specific findings as to why a more permanent goal is not in the best interest of the child. The Preventing Sex Trafficking Act refines this finding as follows: 1) as of the date of the hearing, APPLA is the best permanency goal for the youth, and 2) there are compelling reasons why it is not in the best interests of the youth

to be placed permanently with a parent, in an adoptive placement, in a guardianship, or in the custody of the Department in a relative placement. (NOTE: Federal law makes long-term foster care with a relative OK for purposes of IV-E funding. That is why "relative placement" is listed here, even though that is not listed as a permanency goal in the state statute.)

16-1620(3)(i) and (7) – permanency plan, agg circ (document in plan and make findings)- **pg. 10 (L. 40-50); pg. 11 (L. 1-10); pg. 12 (L. 1-12)**

16-1621(3)(d)(vii)(2) – concurrent plan (document in plan)- **pg. 14 (L. 36-42)**

16-1622(1)(a)(vii) and (viii) – review hearing (document and make findings)- **pg. 17 (L. 1-28)**

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IDHW must make reasonable efforts to place siblings together, and if siblings can't be placed together, IDHW must provide a plan for frequent visitation or ongoing interaction between the siblings, unless it is contrary to the welfare of one or more of the siblings.

16-1615(7)(b) – shelter care hearing (court will inquire)- **pg. 7 (L. 13-18)**

16-1619(7)(b)(ii) – adjudicatory hearing (court will inquire)- **pg. 8 (L. 48-50); pg. 9 (L. 1-5)**

16-1620(3)(g) – permanency plan, agg circ (document in plan)- **pg. 10 (L. 22-30)**

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16-1622(1)(a)(iv) – review hearings (document and inquire)- **pg. 16 (26-33)**

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IDHW must develop a plan to ensure educational stability for a child, including assurances that the child's placement takes into account the appropriateness of the current educational setting and the proximity of the school that the child is enrolled in at the time of the placement, and assurances that IDHW will make reasonable efforts to ensure that the child remains in the school the child is enrolled in at the time of placement.

16-1615(7)(a) – shelter care (court will inquire)- **pg. 7 (L. 10-11)**

16-1619(7)(b)(i) – adjudicatory hearing (court will inquire)- **pg. 8 (L. 43-47)**

16-1620(3)(f) – permanency plan, agg circ (document in plan)- **pg. 10 (L. 14-21)**

16-1621(3)(b)(ii) – case plan (document in plan)- **pg. 13 (L. 23-28)**

16-1622(1)(a)(iii) – review hearings (document and inquire) – **pg. 16 (L. 20-25)**

16-1622(2)(h)(i) and (i) – annual permanency hearing (document in plan, by cross reference to contents of case plan, and court will inquire)- **pg. 19 (L. 25-28); pg. 19 (L. 37-44)**

C. ICWA AND BIA GUIDELINES

The Bureau of Indian Affairs has adopted new guidelines for implementing the Indian Child Welfare Act, and the process is underway for the guidelines to be adopted as regulations. The only change the committee is proposing to the Idaho statute is to require the court, at every hearing, to inquire about the child's possible Indian status. It is essential to identify the child's status as early as possible for two reasons: 1) to ensure compliance with ICWA, and 2) to avoid potential disruption to the child's life and to the judicial proceedings from failure to comply with ICWA. It is necessary to continue the inquiry because new information as to the child's status may arise at any time in the proceeding.

Court will inquire whether there is reason to believe that the child is an Indian child:

16-1615(6) – shelter care- **pg. 6 (L. 1-5)**

16-1619(7)(a) – adjudicatory hearing- **pg. 8 (L. 35-42)**

If there is reason to believe that the child is an Indian child but there has been no final determination of the child's status, IDHW will document its efforts to determine the child's status and the court will determine whether IDHW is making active efforts to work with all tribes of which the child may be a member to determine whether the child is a member or eligible for membership:

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16-1621(3)(b)(v) and (1)(b) - case plan (document in plan and make findings)- **pg. 12 (L. 34-41); pg. 13 (L. 36-43)**

16-1622(1)(a)(ii) – review hearing (document and make findings)- **pg. 16 (L. 9-19)**

16-1622(2)(i) – annual permanency hearing (document in plan, by cross-reference to contents of case plan, and make findings)- **pg. 19 (37-44)**

D. MISCELLANEOUS CLARIFICATION / CLEANUP

1. Shelter care

The purpose of a shelter care hearing is for the court to decide first, whether there is reasonable cause to believe that a child comes within the jurisdiction of the CPA, and if so, whether it is in the best interest of the child to be placed in temporary shelter care pending the adjudicatory hearing. The court also has the authority to issue a protection order (whether or not the child is placed in shelter care). So there are four potential outcomes:

First, and most commonly, there is reasonable cause, and the child should be placed in shelter care. Second, there is reasonable cause, but it is not necessary to place the child in shelter care, because the child's welfare can be adequately safeguarded by issuing a protection order, in which case the case should continue to an adjudicatory hearing.

Third, there is reasonable cause, but it is not necessary either to place the child in shelter care, or to issue a protection order, and the case should still proceed to adjudicatory hearing. This is rare but it has happened – usually when the state needed to file a petition to spur the parent(s) to action, filing the petition had the desired effect, everyone is reasonably confident that the parent(s) will proceed with the necessary action, but the adjudicatory hearing is still needed to ensure that the parent(s) proceed with the necessary action.

The last possible outcome is that there is not reasonable cause, in which case the petition should be dismissed.

Oddly, the statute explicitly addresses only the first option, and then says that if the court doesn't decide to place or keep the child in shelter care, the petition "may" be dismissed (and the language about issuing a protection order is kind of stuck in the middle of the criteria for option one). This lack of clarity has resulted in some confusion in some cases about the correct outcome when the court doesn't place a child in shelter care.

So, the proposal is to amend 16-1615, which governs shelter care hearings. Subsection (5) continues to address the criteria for shelter care. Issuance of a protection order is separated from the criteria for shelter care and placed in its own subsection (8). Subsection (6) says if reasonable cause is found, the case will be scheduled for an adjudicatory hearing. Subsection (10) says if reasonable cause is not found, the petition will be dismissed.

Pg. 6 (L. 40-49); Pg. 7 (L. 1-30).

2. Status hearings

The committee recommends amending 16-1622 by the addition of a new subsection – now (1)(b) – to distinguish between a review hearing and a status hearing. The proposed language provides that a status hearing is one that does not address all the issues identified in the subsection on review hearings, and written reports are not required unless ordered by the court. It is hoped that the proposed amendment will help to clarify the purpose of a review hearing and create an opportunity for the court to review discrete issues without requiring a report from IDHW and the guardian *ad litem*.
Pg. 17 (L. 40-44).

3. Redisposition hearings

There is continuing confusion about the hearing that takes place when a child who is under protective supervision is removed from the home pursuant to 16-1623. The proposal is to amend subsection (3) to state that the hearing is a redisposition

hearing (not a shelter care hearing). The language also clarifies that this section applies only when a child is removed without prior hearing. **Pg. 20 (L. 7-15).**

Also, subsection (5) currently provides that, if the court amends disposition to place the child in IDHW custody, IDHW shall prepare a written case plan. The proposal is to amend that subsection to provide that the court may order a written case plan. Some judges have found that there are some instances where a new case plan is not needed.

4. Protective orders

Amend the definition of protective order in 16-1602 (subsection 31 in the statute but 32 in the proposed amendment) to delete the language limiting a protective order to one issued prior to an adjudicatory hearing. **Pg. 5 (L. 13-19).**

5. Permanency hearings in aggravated circumstance cases

Amend 16-1620(1) to require annual permanency hearings in addition to the thirty-day permanency hearing. **Pg. 9 (L. 36-37).**

6. Reports at review hearings

Amend 16-1622(1)(a) to provide that reports must be filed at least five days prior to the hearing. **Pg. 15 (L. 47-48).**

7. Defects

16-1621(2): change "deputing" attorney general to deputy attorney general. **Pg. 12 (L. 46).**

WHAT HAPPENS IN A CHILD PROTECTION CASE?

The Shelter Care Hearing

The shelter care hearing is the first hearing after a child is removed from the home.

The purpose of the shelter care hearing is for the court to decide:

- (1) if there is reasonable cause to believe that the child (children) comes under the jurisdiction of the CPA, and
- (2) if the child (children) should be placed in temporary shelter care until the adjudicatory hearing.

If the court finds there is reasonable cause to believe that the child (children) comes under the jurisdiction of the CPA, the court will set a pretrial conference and an adjudicatory hearing. The adjudicatory hearing will be for a date within 30 days, and the pretrial conference will be three to five days before the adjudicatory hearing.

The Adjudicatory Hearing

The purpose of the adjudicatory hearing is for the court to decide:

- (1) if the child (children) comes under the jurisdiction of the CPA, and
- (2) if the child (children) should be placed in the custody of a parent under the protective supervision of IDHW, or in the custody of IDHW (foster care).

A child is "under the jurisdiction of the CPA" if:

- The child is abandoned.
- The child is abused.
- The child is neglected.
- The child is homeless.
- The child lacks a stable home environment.
- The court has taken jurisdiction over another child in the same household under the CPA.

If the court finds that the child (children) comes under the jurisdiction of the CPA, the court will schedule a case plan hearing. The case plan hearing will be for a date within 30 days. The court will keep its authority over the child (children) until the child (children) turns 18, unless the court closes the case before then.

The Case Plan Hearing and Efforts to Reunify the Family

After the adjudicatory hearing, children 8 years old or older have the right to be notified of hearings and have the right to be heard by the court. Foster parents are also entitled to notice of hearings and the opportunity to be heard by the court.

The court will order IDHW to prepare a case plan, and to consult with the parents in preparing the plan. The case plan has TWO parts:

- (1) The *reunification plan* identifies what the parent(s) and IDHW will do so that the child (children) can safely return home.
- (2) The *concurrent permanency plan* identifies a plan for the permanent placement of the child (children) with another family in case the parent(s) do not complete the reunification plan.

At the case plan hearing, the court will decide whether to approve the plan or to make changes to the plan.

After the case plan hearing, the court will have regular review hearings. The purpose of a review hearing is for the court to review the progress in the case, and to decide whether to make changes to the case plan. At the hearings, if the parent(s) is making good progress on the reunification plan, the court can decide whether to return the child to a parent under the supervision of IDHW, whether to return the child to a parent for an extended home visit, or whether to return the child to a parent and close the case.

The Annual Permanency Hearing

The court is required to have a permanency hearing within one year after a child is removed from the home, and every year until the case is closed. The court will order IDHW to prepare a permanency plan. The permanency plan includes a permanency goal, and a plan for meeting that goal. The permanency goal can be:

- Continued efforts at reunification,
- Termination of parental rights and adoption,
- Guardianship, or
- Another permanent planned living arrangement.

At the annual permanency hearing, the court will decide whether to approve the plan or make changes to the plan. If a child has been in the custody of IDHW for 15 of the last 22 months, IDHW must file a petition to terminate parental rights, unless the court finds specific reasons why the petition should not be filed.

After the permanency hearing, the court will have regular review hearings and annual permanency hearings, until the child's permanent placement is finalized and the case is closed.

Aggravated Circumstances

If it is alleged that aggravated circumstances were present, then the court will have a hearing to decide if that is true. If the court finds that aggravated circumstances were present, then there will be no efforts to reunify the parent with the child. The court will order IDHW to prepare a permanency plan, and set a permanency hearing for a date within thirty days.

The permanency plan includes a permanency goal and a plan for meeting that goal. At the permanency hearing the court will decide whether to approve the plan or make changes to the plan.

After the permanency hearing, the court will have regular review hearings and annual permanency hearings, until the child's permanent placement is finalized and the case is closed.

Senate Bill 1328

2016 PROPOSED AMENDMENTS TO THE CHILD PROTECTIVE ACT

The proposed amendments were prepared by the Idaho Supreme Court Child Protection Committee. The committee was established in 1998 to improve practices in child protection cases, and ultimately, to improve outcomes for children in child protection cases. The committee has broad representation from the primary stakeholders in child protection cases, including a judge from each judicial district, the Idaho Department of Health and Welfare (IDHW), the Office of the Attorney General, prosecutors, public defenders, guardians *ad litem*, Native American Tribes, and the Casey Foundation. Depending on the issues the committee is working on, participants in the committee have included representatives from foster parent groups, foster youth groups, the Idaho Department of Juvenile Corrections, and others.

This degree of representation is important to ensure that the committee has both the broadest range of information and the broadest range of viewpoints available to it. A broad range of information and viewpoints is essential to the committee's efforts, which include identifying the issues the committee is going to tackle, identifying the options for addressing those issues, and selecting and implementing the options best suited to the needs and concerns of Idaho citizens.

The purpose of the proposed amendments is to implement best practices identified and/or developed by the committee. Part of the committee's work is to review best practices used in other jurisdictions or recommended by commentators in the various disciplines related to child protection. This includes practices required by recent federal legislation.

This is a summary of the issues addressed by the proposed changes. In the first three sections, IDHW is required to provide information to the court at certain phases of a child protection case, and/or the court is required to make inquiry and/or findings as to the issue at certain phases of the case. Each subsection below addresses a particular issue, lists the statute with recommended changes, and identifies when IDHW is required to document information to the court, when the court is required to make inquiry, and when the court is required to make findings. The fourth section addresses areas that warranted clarification or minor correction.

A. PSYCHOTROPIC MEDICATIONS

A recent study by the Casey Foundation found that 43% of foster kids in Idaho are prescribed psychotropic drugs, compared to 14% of children generally, but there is no information to support the conclusion that the incidence of mental health disorders is three times higher for foster kids than for kids generally. The drugs are often prescribed by general practitioners and nurse practitioners who do not specialize in the diagnosis or treatment of mental health disorders. The drugs have been approved for use in adults, and it is known that many of them have serious side effects, but very little is

known about the impact of these drugs on child or adolescent brain development. The drugs are often prescribed “off-label,” which means drugs that have been approved for the treatment of certain disorders are used for other purposes.

The most commonly used psychotropic medications are the antipsychotics, which are often prescribed for kids who have not been diagnosed with a psychotic disorder, but are perceived as effective because they have the side effect of serving as a chemical restraint (Risperdal, aka risperidone, is a common example). Another common problem is traumatized kids whose behavior is misdiagnosed as ADHD, and who are prescribed a stimulant (Ritalin). The stimulant drug has a calming effect on an ADHD kid, but not other kids. So the traumatized kid’s thinking is scattered by the corticosteroids produced by trauma, then further scattered by chemical stimulants, then they are sent to school and told to pay attention and do their homework. The list of potential problem situations goes on and on. The vast majority of these kids have no one with the wherewithal to ask the necessary questions to be an informed consumer, and to make the kind of informed treatment decisions that we would make for ourselves, our kids, or our parents.

So what do we do? No judge is going to go head-to-head with the doctor, and override a doctor’s decision. The proposal is that, at every review and permanency hearing, IDHW will report if a child is being prescribed psychotropic meds, and if so, what, how much, and by whom. The court can then ask anything the court wants to ask.

- 16-1619(7)(c) - adjudicatory hearing (court will inquire) – **pg. 9 (L. 5-12)**
- 16-1620(4)(c) - permanency hearing, agg circ (IDHW will document and court will inquire)- **pg. 11 (L. 34-40)**
- 16-1621(1)(c) - case plan – **pg. 12 (L. 42-44)**
- 16-1622(1)(a)(ix) – review hearing (document and inquire)- **pg. 17 (L. 29-36)**
- 16-1622(2)(j) – annual permanency hearing (document and inquire)-
pg. 19 (L. 45-49); pg. 20 (L. 1-2)

The rationale is that if the court starts asking questions, that will empower parents, foster parents and social workers to ask questions, and that might contribute to more informed decision-making by all concerned. In addition, the judges will hopefully discover options for further action, and share what they learn with others. Some options that come to mind are that the judge could require that IDHW take the child to a different medical service provider for a second opinion; the judge could require that IDHW take the child to a pediatric psychiatrist (there are only two in Idaho); the judge could ensure that the child is receiving services in addition to med management for mental health issues; or the process could be initiated for a children’s mental health commitment.

IDHW has a protocol for case workers with kids who are being treated with psychotropic meds, and it has some good basic elements. In addition, there is a bench card that offers judges guidance as to questions the judge might ask.

B. 2014 FEDERAL LEGISLATION: The Preventing Sex Trafficking and Strengthening Families Act, and the Fostering Connections Act

A recent study by the Casey Foundation found that, among foster children who age out of the system, more than half end up incarcerated or dead within one year. In addition, Idaho law enforcement agencies have compelling and horrific information as to the nature and extent of sex trafficking of children in Idaho. Improving outcomes for foster youth has been a major focus of child protection efforts in Idaho and nationwide. Both of the recent federal laws contain extensive provisions intended to improve outcomes for foster children, and particularly foster youth.

Both laws are directed primarily at state agencies, and compliance with both is necessary to maintain federal funding (over \$17 million last year). Members of the committee reviewed the laws in detail to identify only those changes to the Idaho statute that were necessary to maintain federal funding AND that the committee believes will improve outcomes for Idaho foster children, particularly foster youth. The further effort required by the courts is not burdensome. The further effort required by IDHW is substantial, but that effort is already required by federal law, and IDHW supports the proposed amendments. Implementing the proposed amendments will not have a direct impact on the general fund, but the failure to do so will result in the loss of funding desperately needed for work that we already do or need to do for Idaho foster children.

1. Transition to Successful Adulthood (from the Sex Trafficking Act)

“Transition to independent living” is now called “transition to successful adulthood,” and the age at which transition planning must start is 14 rather than 16. A transition plan must also be included in case plans (it was previously included in permanency plans). Although not required, the committee recommends it as a consideration at review hearings. The committee also recommends a review and/or permanency hearing 90 days prior to a youth aging out to address the transition plan.

16-1620(3)(h) – agg circ permanency plan (document in plan)- **pg. 10 (L. 31-39)**

16-1621(3)(a) – case plan- IDHW custody (document in plan) – **pg. 13 (L. 5-17)**

16-1621(3)(d)(vi) – concurrent plan (document in plan)- **pg. 14 (L. 25-49)**

16-1621(4)(a) – case plan - protective supervision (document in plan)-
pg. 15 (L. 5-18)

16-1622(1)(a)(v) – review hearing (review)- **pg. 16 (L. 34-39)**

16-1622(2)(a) and (e) – annual permanency hearing (document in plan by cross reference to contents of case plan, and make findings)- **pg. 18 (L. 12-33), (L. 45-49); pg. 19 (L. 1-2)**

16-1622(3) – review hearing prior to aging out- **pg. 20 (L. 7-15)**

2. Youth’s rights (from the Sex Trafficking Act)

For youth age 14 and older, the case plan must document that the youth was provided with information about his/her rights (education, health, visitation, court participation, receipt of annual credit report, including signed acknowledgement from IDHW that youth was provided with the information and it was explained in age or developmentally appropriate way).

16-1620(3)(h) – agg circ permanency plan- **pg. 10 (L. 31-39)**

- 16-1621(3)(a) – case plan (IDHW custody)- **pg. 13 (L. 5-17)**
- 16-1621(4)(a) – case plan (protective supervision)- **pg. 15 (L. 7-18)**
- 16-1622(2)(a) – annual permanency plan (included by cross-reference to contents of case plan)- **pg. 18 (L. 16)**

3. Youth's desires as to permanency (from the Sex Trafficking Act)

For youth age 12 and older, the court will inquire at review and permanency hearings as to the youth's permanency desires. (The federal statute requires this for youth with another planned permanent living arrangement (APPLA) as a permanency goal. The committee recommends that we do this for all youth 12 and older.)

- 16-1620(4)(a) – permanency hearing with agg circ- **pg. 11 (L. 22-25)**
- 16-1622(1)(a)(v) and (3) – review hearing- **pg. 16 (L. 34-39); pg. 20 (L. 7-15)**
- 16-1622(2)(e) – annual permanency hearing- **pg.18 (L. 45-49); pg. 19 (L. 1-2)**

4. Another Planned Permanent Living Arrangement (APPLA) (from the Sex Trafficking Act)

a. Limited to youth 16 and older

- 16-1620(2) – list of permissible permanency goals- **pg. 9 (L. 45-48)**
- 16-1622(2)(a) and (f) – list of permissible permanency goals- **pg. 18 (L. 16)**

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IDHW must make reasonable efforts to place siblings together, and if siblings can't be placed together, IDHW must provide a plan for frequent visitation or ongoing interaction between the siblings, unless it is contrary to the welfare of one or more of the siblings.

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16-1622(1)(a)(iii) – review hearings (document and inquire) – **pg. 16 (L. 20-25)**

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Court will inquire whether there is reason to believe that the child is an Indian child:

16-1615(6) – shelter care- **pg. 6 (L. 1-5)**

16-1619(7)(a) – adjudicatory hearing- **pg. 8 (L. 35-42)**

If there is reason to believe that the child is an Indian child but there has been no final determination of the child's status, IDHW will document its efforts to determine the child's status and the court will determine whether IDHW is making active efforts to work with all tribes of which the child may be a member to determine whether the child is a member or eligible for membership:

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16-1621(3)(b)(v) and (1)(b) - case plan (document in plan and make findings)- **pg. 12 (L. 34-41); pg. 13 (L. 36-43)**

16-1622(1)(a)(ii) – review hearing (document and make findings)- **pg. 16 (L. 9-19)**

16-1622(2)(i) – annual permanency hearing (document in plan, by cross-reference to contents of case plan, and make findings)- **pg. 19 (37-44)**

D. MISCELLANEOUS CLARIFICATION / CLEANUP

1. Shelter care

The purpose of a shelter care hearing is for the court to decide first, whether there is reasonable cause to believe that a child comes within the jurisdiction of the CPA, and if so, whether it is in the best interest of the child to be placed in temporary shelter care pending the adjudicatory hearing. The court also has the authority to issue a protection order (whether or not the child is placed in shelter care). So there are four potential outcomes:

First, and most commonly, there is reasonable cause, and the child should be placed in shelter care. Second, there is reasonable cause, but it is not necessary to place the child in shelter care, because the child's welfare can be adequately safeguarded by issuing a protection order, in which case the case should continue to an adjudicatory hearing.

Third, there is reasonable cause, but it is not necessary either to place the child in shelter care, or to issue a protection order, and the case should still proceed to adjudicatory hearing. This is rare but it has happened – usually when the state needed to file a petition to spur the parent(s) to action, filing the petition had the desired effect, everyone is reasonably confident that the parent(s) will proceed with the necessary action, but the adjudicatory hearing is still needed to ensure that the parent(s) proceed with the necessary action.

The last possible outcome is that there is not reasonable cause, in which case the petition should be dismissed.

Oddly, the statute explicitly addresses only the first option, and then says that if the court doesn't decide to place or keep the child in shelter care, the petition "may" be dismissed (and the language about issuing a protection order is kind of stuck in the middle of the criteria for option one). This lack of clarity has resulted in some confusion in some cases about the correct outcome when the court doesn't place a child in shelter care.

So, the proposal is to amend 16-1615, which governs shelter care hearings. Subsection (5) continues to address the criteria for shelter care. Issuance of a protection order is separated from the criteria for shelter care and placed in its own subsection (8). Subsection (6) says if reasonable cause is found, the case will be scheduled for an adjudicatory hearing. Subsection (10) says if reasonable cause is not found, the petition will be dismissed.

Pg. 6 (L. 40-49); Pg. 7 (L. 1-30).

2. Status hearings

The committee recommends amending 16-1622 by the addition of a new subsection – now (1)(b) – to distinguish between a review hearing and a status hearing. The proposed language provides that a status hearing is one that does not address all the issues identified in the subsection on review hearings, and written reports are not required unless ordered by the court. It is hoped that the proposed amendment will help to clarify the purpose of a review hearing and create an opportunity for the court to review discrete issues without requiring a report from IDHW and the guardian *ad litem*.
Pg. 17 (L. 40-44).

3. Redisposition hearings

There is continuing confusion about the hearing that takes place when a child who is under protective supervision is removed from the home pursuant to 16-1623. The proposal is to amend subsection (3) to state that the hearing is a redisposition

hearing (not a shelter care hearing). The language also clarifies that this section applies only when a child is removed without prior hearing. **Pg. 20 (L. 7-15).**

Also, subsection (5) currently provides that, if the court amends disposition to place the child in IDHW custody, IDHW shall prepare a written case plan. The proposal is to amend that subsection to provide that the court may order a written case plan. Some judges have found that there are some instances where a new case plan is not needed.

4. Protective orders

Amend the definition of protective order in 16-1602 (subsection 31 in the statute but 32 in the proposed amendment) to delete the language limiting a protective order to one issued prior to an adjudicatory hearing. **Pg. 5 (L. 13-19).**

5. Permanency hearings in aggravated circumstance cases

Amend 16-1620(1) to require annual permanency hearings in addition to the thirty-day permanency hearing. **Pg. 9 (L. 36-37).**

6. Reports at review hearings

Amend 16-1622(1)(a) to provide that reports must be filed at least five days prior to the hearing. **Pg. 15 (L. 47-48).**

7. Defects

16-1621(2): change "deputing" attorney general to deputy attorney general. **Pg. 12 (L. 46).**

WHAT HAPPENS IN A CHILD PROTECTION CASE?

The Shelter Care Hearing

The shelter care hearing is the first hearing after a child is removed from the home.

The purpose of the shelter care hearing is for the court to decide:

- (1) if there is reasonable cause to believe that the child (children) comes under the jurisdiction of the CPA, and
- (2) if the child (children) should be placed in temporary shelter care until the adjudicatory hearing.

If the court finds there is reasonable cause to believe that the child (children) comes under the jurisdiction of the CPA, the court will set a pretrial conference and an adjudicatory hearing. The adjudicatory hearing will be for a date within 30 days, and the pretrial conference will be three to five days before the adjudicatory hearing.

The Adjudicatory Hearing

The purpose of the adjudicatory hearing is for the court to decide:

- (1) if the child (children) comes under the jurisdiction of the CPA, and
- (2) if the child (children) should be placed in the custody of a parent under the protective supervision of IDHW, or in the custody of IDHW (foster care).

A child is "under the jurisdiction of the CPA" if:

- The child is abandoned.
- The child is abused.
- The child is neglected.
- The child is homeless.
- The child lacks a stable home environment.
- The court has taken jurisdiction over another child in the same household under the CPA.

If the court finds that the child (children) comes under the jurisdiction of the CPA, the court will schedule a case plan hearing. The case plan hearing will be for a date within 30 days. The court will keep its authority over the child (children) until the child (children) turns 18, unless the court closes the case before then.

The Case Plan Hearing and Efforts to Reunify the Family

After the adjudicatory hearing, children 8 years old or older have the right to be notified of hearings and have the right to be heard by the court. Foster parents are also entitled to notice of hearings and the opportunity to be heard by the court.

The court will order IDHW to prepare a case plan, and to consult with the parents in preparing the plan. The case plan has TWO parts:

- (1) The *reunification plan* identifies what the parent(s) and IDHW will do so that the child (children) can safely return home.
- (2) The *concurrent permanency plan* identifies a plan for the permanent placement of the child (children) with another family in case the parent(s) do not complete the reunification plan.

At the case plan hearing, the court will decide whether to approve the plan or to make changes to the plan.

After the case plan hearing, the court will have regular review hearings. The purpose of a review hearing is for the court to review the progress in the case, and to decide whether to make changes to the case plan. At the hearings, if the parent(s) is making good progress on the reunification plan, the court can decide whether to return the child to a parent under the supervision of IDHW, whether to return the child to a parent for an extended home visit, or whether to return the child to a parent and close the case.

The Annual Permanency Hearing

The court is required to have a permanency hearing within one year after a child is removed from the home, and every year until the case is closed. The court will order IDHW to prepare a permanency plan. The permanency plan includes a permanency goal, and a plan for meeting that goal. The permanency goal can be:

- Continued efforts at reunification,
- Termination of parental rights and adoption,
- Guardianship, or
- Another permanent planned living arrangement.

At the annual permanency hearing, the court will decide whether to approve the plan or make changes to the plan. If a child has been in the custody of IDHW for 15 of the last 22 months, IDHW must file a petition to terminate parental rights, unless the court finds specific reasons why the petition should not be filed.

After the permanency hearing, the court will have regular review hearings and annual permanency hearings, until the child's permanent placement is finalized and the case is closed.

Aggravated Circumstances

If it is alleged that aggravated circumstances were present, then the court will have a hearing to decide if that is true. If the court finds that aggravated circumstances were present, then there will be no efforts to reunify the parent with the child. The court will order IDHW to prepare a permanency plan, and set a permanency hearing for a date within thirty days.

The permanency plan includes a permanency goal and a plan for meeting that goal. At the permanency hearing the court will decide whether to approve the plan or make changes to the plan.

After the permanency hearing, the court will have regular review hearings and annual permanency hearings, until the child's permanent placement is finalized and the case is closed.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Monday, February 29, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>RS24538C1</u>	Relating to malicious harassment	Senator Grant Burgoyne
<u>RS24544</u>	Relating to guardians of minors	Robert L. Aldridge, Trust & Estate Professionals of Idaho
<u>RS24545</u>	Relating to the delegation of powers over minors or persons with developmental disabilities	Robert L. Aldridge, Trust & Estate Professionals of Idaho
<u>S 1300</u>	Relating to clarification of persons not qualifying as a surviving spouse	Robert L. Aldridge, Trust & Estate Professionals of Idaho
<u>S 1301</u>	Relating to community property	Robert L. Aldridge, Trust & Estate Professionals of Idaho
<u>S 1302</u>	Relating to estates, removing reference to a family allowance	Robert L. Aldridge, Trust & Estate Professionals of Idaho
<u>S 1303</u>	Relating to digital assets	Robert L. Aldridge, Trust & Estate Professionals of Idaho

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 29, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Vice Chairman Nonini

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:34 p.m. and thanked those in attendance.

RS 24538C1 **Senator Grant Burgoyne**, District 16, introduced co-sponsor Representative Lance Clow, District 24. **Senator Burgoyne** explained that the legislation permits a victim of malicious harassment, stalking or telephone harassment to file a civil petition in court seeking a protective order on behalf of himself, his children or his ward. The court may grant the petition and issue a protective order if it is shown that such conduct occurred within 90 days immediately preceding the filing of the petition and that such conduct is likely to occur in the future thereby causing irreparable injury. The protective order may not exceed one year. The respondent may be directed to refrain from such conduct or from contact with the protected person. Respondent may also be required to maintain a distance of up to 1,500 feet from the protected person. Other provisions may include renewal of such an order in one-year increments, waiver of court filing fees to ensure that Idaho continues to receive federal victim services funding and making it a misdemeanor to violate a protective order.

Senator Burgoyne indicated that it is not possible to determine the number of petitions that might be filed and the impact to the General Fund. Several factors that may impact the fiscal note include processing petitions by judges and other court personnel, entering orders into the Idaho law enforcement telecommunications data base (ILETS), possible legal proceedings resulting from arrests and the waiver of the \$166 court filing fee.

Senator Davis asked why the spouse or other occupants of the petitioner's residence were excluded from the legislation. **Senator Burgoyne** responded that a spouse or other adult member of the household could protect themselves by either joining the petitioner or bringing their own petition. **Senator Jordan** stated that although there may be increased costs, there may also be some increased savings. She appreciated the hard work on this bill and recognized the need for it.

MOTION: **Senator Jordan** moved that **RS 24538C1** be sent to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 24544

Robert L. Aldridge, Trust and Estate Professionals of Idaho, stated that over the last several years the use of the Delegation of Powers by Parent or Guardian has expanded, especially in situations where a parent hands over their child to another family member for a temporary time period. Reasons for its use range from military deployment to parental substance abuse. This legislation would allow letters of guardianship to be obtained under limited circumstances. A nomination of that person can be prepared prior to an occurrence when the nomination is required. If a determination of incapacity is made, the person nominated can take the delegation to the courts, file it with their written acceptance and copies of adjudication or physician's statement, and the court will issue letters of guardianship. Letters will remain in effect as long as the parent is incapacitated. This would avoid an expensive guardianship process.

Senator Davis questioned whether the court would trust the judgement of the parent making the nomination. **Mr. Aldridge** stated that they would. A discussion was held concerning putting a time limit on the nomination. **Mr. Aldridge** stated that if an interested person saw a problem with a nominee, he/she could still intercede and a child protection agency could get involved as well. **Senator Davis** expressed concern that there was nothing in this bill stating that any child protection agency has exclusive jurisdiction over guardianship of any child who comes before them.

MOTION:

Senator Davis moved to send **RS 24544** to print. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

RS 24545

Mr. Aldridge stated that there are times when an immediate delegation of a minor child is required. The bill adds the ability to create a springing power that is triggered by a specific event. The legislation clearly specifies covering minor children and people with developmental disabilities. The added language will also reflect time limits depending on the situation and/or the person delegated. The events that are covered in this bill are incapacity of the parent, incarceration of the parent or certification by the parent that the delegation should become effective. There are clear details on the procedures to be followed and the time periods for which the delegation is effective. The bill reflects that any interested person can bring a formal guardianship proceeding, which gives protection if the delegation is not to an appropriate person.

Senator Anthon questioned whether conservatorship or guardianship is appropriate in these situations. **Mr. Aldridge** stated that a conservatorship is more important because of the amount of money sometimes involved. If a change is involved in a conservatorship, it should be brought before the court and may result in time delays. He indicated that emergency temporary appointments were set up to accommodate those circumstances.

MOTION:

Senator Anthon moved to send **RS 24545** to print. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

Senator Davis indicated he saw an inconsistency in this bill and **RS 24544** regarding whether the physicians need to be "licensed." **Mr. Aldridge** said he would check to see if "licensed" needed to be added to this bill.

S 1300

Mr. Aldridge stated that **S 1300** amends Idaho Code 15-2-802. The legislation affects how divorce relates to various documents, planning methods and beneficiary designations. Idaho law has a very limited automatic effect of divorce on various matters that should be taken care of in the aftermath of a divorce. Divorces are often now handled by parties themselves without using legal advice. The "checklist" of things that need to be done after a divorce is often missed. This bill covers some changes made in terminology. It also adds new subsection 15-2-804, which provides detailed coverage of when probate and non-probate transfers may be revoked by a divorce (see attachment 1).

Senator Davis asked if the language being used was the final approved language by the Uniform Law Commission. **Mr. Aldridge** responded that it was. **Senator Davis** asked Mr. Aldridge to explain what was meant by "nullification of the divorce or annulment." **Mr. Aldridge** stated that if either the divorce decree or the annulment is later over turned, nullification is the general term used for that. **Senator Davis** said that he was concerned with the use of "nullification of the divorce or annulment" being added into the statute.

MOTION: **Senator Davis** moved to send **S 1300** to the 14th Order for amendment. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

Chairman Lodge indicated that Mr. Aldridge and Senator Anthon would work out the details of this bill.

S 1301 **Mr. Aldridge** stated that the effect of this bill covers depositing community property into an account that may not have the names of both married individuals. This legislation would make it clear that depositing community property in an account, however titled, does not in and of itself alter the community property character of the property or the community rights of the property. The second part of the bill protects third parties such as banks or stock companies by providing that rights of survivorship between married individuals that arise from the express terms of the account cannot be altered by the provisions of a Will.

Senator Johnson stated that the word "will" is not consistently capitalized throughout the bill and the statement of purpose. **Mr. Aldridge** said the Legislative Services Office has rules to follow for capitalization and it is not capitalized.

MOTION: **Senator Burgoyne** moved to send **S 1301** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

S 1302 **Senator Davis** stated that this bill strikes the words "family allowance" from the Probate Code and simply removes old language.

MOTION: **Senator Davis** moved to send **S 1302** to the floor with a **do pass** recommendation and that it be put on the Consent Calendar. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1303 **Mr. Aldridge** stated that this bill deals with digital assets and access to them. The legislation balances the need for fiduciaries to have access to digital assets, the need for the privacy of the account to be kept unless the holder is willing to have the account be available and protection for the providers of the accounts. By adding a "designated recipient," this legislation will allow such person to have access to the user's digital assets or to direct the custodian to delete the user's digital assets in the case of death or incapacity (see attachment 2).

Senator Davis stated that there needs to be a way for others to manage digital assets upon the death or incapacitation of the user and this statute addresses that. It provides protection against both federal and State laws of privacy so that the information can be accessed and administered and yet provide privacy protection. It complies with federal copyright laws.

Chairman Lodge said she would make sure the Committee gets a copy of the amendments brought by Mr. Aldridge.

MOTION: **Senator Burgoyne** moved to send **S 1303** to the 14th Order for possible amendment. **Senator Davis** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:50 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Sharon Pennington
Asst. Secretary

Actual Use Rules

- Actual Use Idaho Code 23-932 gives the director of the Idaho State Police the authority for rulemaking.
- ABC Duties
 - Issuance and regulation of alcohol licensing
 - Manufacture, transportation & sale of beer & wine
 - Regulate the sale of liquor-by-the-drink by retail licensees
 - 5,000 licenses issued annually to wineries, breweries, distributors, retail establishments, and direct shippers who ship wine into Idaho from other states.

Quota System

- 1 for every for every 1,500 population within an incorporated city.
- Currently 862 quota system licenses issued
- Limited number of licenses and a higher demand in some cities & so Idaho law allows the licenses to be transferred between private parties.
- The value a license is different in different locations of Idaho due to various factors but to give you an idea here are the current values around the state:

City	Current Value	# Quota Licenses	# Priority Wait List
Boise	\$160,000	137	65
Coeur d'Alene	\$202,000	31	23
Idaho Falls	\$165,000	38	14
Lewiston	\$166,000	22	4
Pocatello	\$77,000	36	17
Twin Falls	\$95,000	31	10
Ketchum	\$233,000	10	9

*The highest price paid for a liquor license transfer was in Ketchum for \$335,000 in 2010

- Priority waiting list for liquor licenses
- Modifications to Idaho Code and to IDAPA to try and ensure these licenses are used once they are issued, and that they are not just received and placed into a drawer.
- Actual use not defined anywhere in Idaho Code nor in rule.
 - 2014 6 cases litigated and 11 in 2015
 - Costly to litigate and it is usually in the thousands of dollars
- Minimum requirement to keep liquor licenses in good standing.
- A definition of "actual use" will keep ABC and licensees wasting resources on litigation

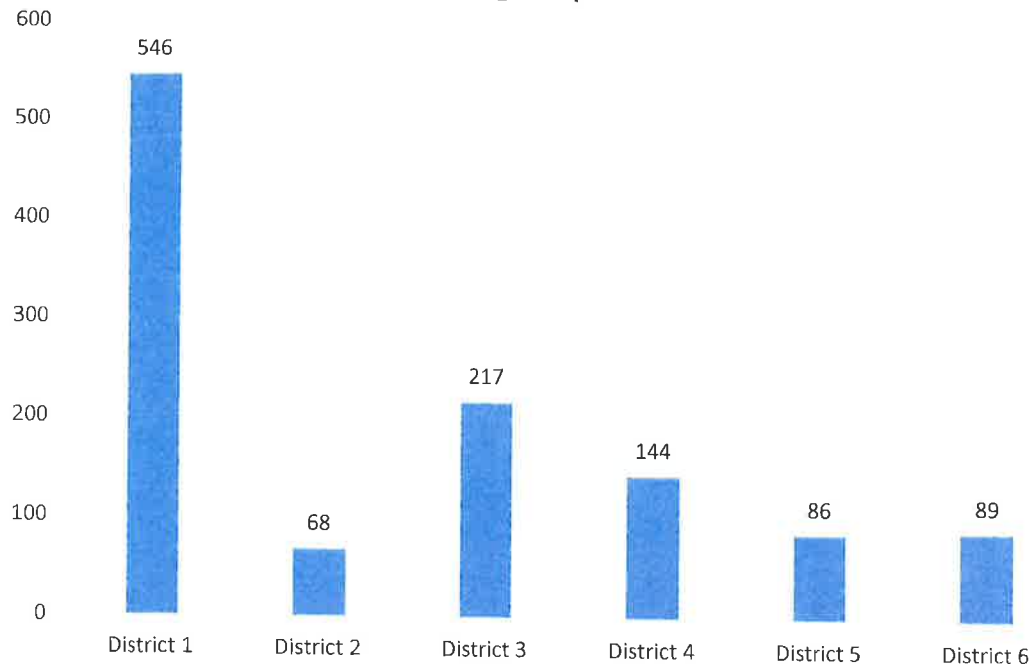
Rule Process

- Rule process started summer 2014 with notice of negotiated rulemaking. No comment from public or industry
- Sought information from industry by contacting associations and then by survey before writing rule so that the smallest/most remote licensees wouldn't have their license at risk.
 - How many days a week were they are open.
 - How many hours a day are the open.
 - How many liquor drinks they sold per day on the days they were open.
 - If they experienced a "busy" and a "slow" season and how the liquor-by-the-drink sales were affected on per day sales.
- This information is what ABC used to arrive at the requirement of 20 hours per week and the 20 liquor-by-the-drink sales per week.
- Idaho Code §23-908(4)] that newly issued liquor licenses be put into "actual use" 6 days a week & 8 hours a day for the first 6 months.
- Actual use beyond that time frame.
 - Not dictating what days of the week
 - Open for "legitimate" sales of liquor 20-hours per week
 - Individual licensee to decide when to be open for these 20-hours.
 - Standard to allow remote business to operate within the confines of the rules, but also provides the agency with an enforceable standard when liquor licenses are not in "actual" use.
 - NO current licensee that is open that would be in violation of this rule if adopted.
- When liquor licenses are being used properly the state of Idaho benefits from the following:
 - Revenue from the purchase of liquor from the Idaho State Liquor Division (ISLD).
 - Creation of jobs
 - Tax revenue
- Dormant liquor frustration for priority waiting list.
- Complaints that quota system licenses are not in actual use.

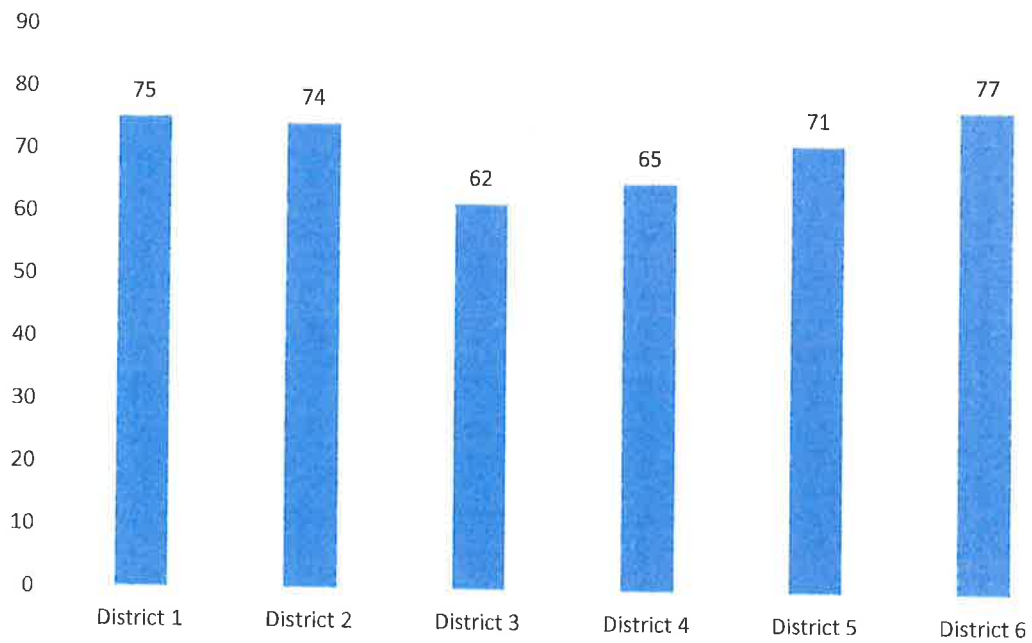
Due Process

- Issue notice when aware of a liquor license not being in use a letter
- Loss or move of physical location have tools in place for licensee
 - 90-days to find a suitable premises
 - Authority to grant a 60-day extension
- This rule does not affect specialty liquor licenses. This is due to specialty liquor license issuance being restricted by a location meeting specific physical requirements (e.g. minimum square footage, minimum amount of water frontage, number of golf holes with a minimum yardage, etc.).
- Beer and wine licenses also to do not have an actual use requirement.
- Supported by the Idaho Licensed Beverage Association (ILBA)
- Clarity for regulators & license holders
- No property right to a liquor license.

Minimum Average Liquor Sales Per Week



Average hours open per week



Idaho Department of Juvenile Corrections
Population Statistics
January 26, 2016

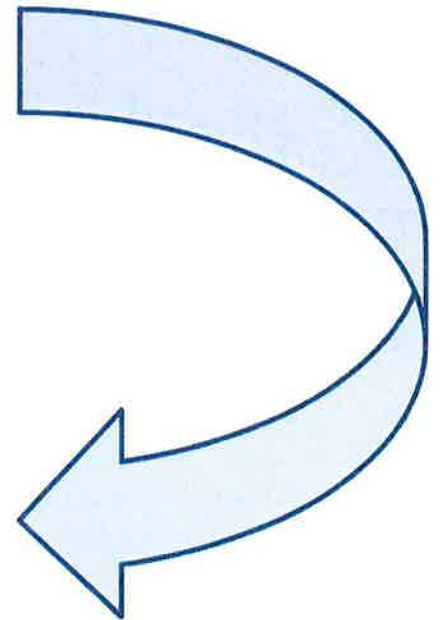
Juvenile Corrections Center–Lewiston	19
Juvenile Corrections Center–Nampa	54
Juvenile Corrections Center–St. Anthony	122
New Commitments awaiting O & A	5

Contract provider	66
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Total Population as of January 26, 2016	266
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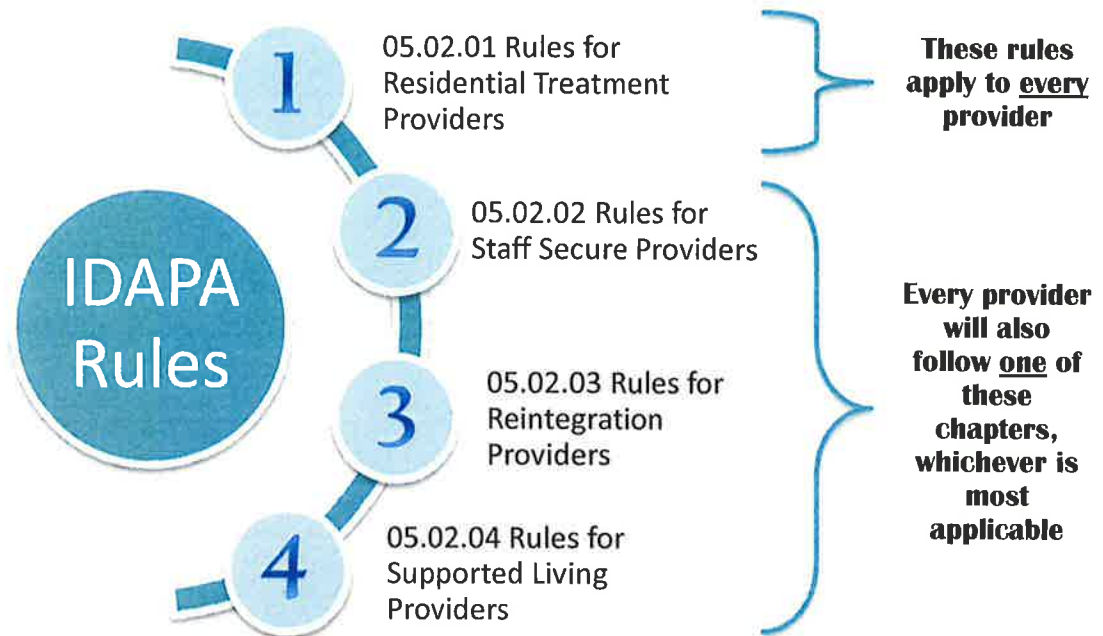
Contract Provider Rules

Staff Secure Providers	Reintegration Providers	Supporting Living Providers
05.02.01	05.02.01	05.02.01
05.02.02	05.02.03	05.02.04



Revision of IDAPA Rules for IDJC Providers

Summary of Major Changes



1. Overall clarification in each section, along with clarification of all reporting requirements to the department.
2. Lengthened the amount of time a provider has to accept or deny a referral from two business days to four business days.
3. Included a section to address volunteers of minimal use. This allows for the provider to use volunteers who meet certain criteria without necessitating a background check or providing the required training.
4. Revised the section related to the Prison Rape Elimination Act (PREA) to increase compliance with the PREA Juvenile Facility Standards.
5. Combined all rules related to suicide precautions and prevention into one section.
6. Added a section requiring the provider to supply a handbook to the juvenile and the parent or guardian. This section also includes the minimum required content of the handbook.
7. Clarification provided on the use of polygraphs as part of the program.
8. Shortened the amount of time for reporting certain incidents to the required person(s) from ten business days to three business days.
9. Clarified the section related to searches for contraband.
10. Added a section on the continued development and the completion of the relapse prevention plan.
11. Removed the requirement that the provider complete a 30-day written recommendation for release.
12. Changed the due date of the final progress report from five days after the juvenile leaves the program to no earlier than ten days before the juvenile's anticipated date of release from the program.
13. Removed the option for providers to utilize the department's educational software program.
14. Added a requirement that the provider provide a 30-day supply of medication or a 30-day prescription signed by the physician upon the juvenile's transfer or release.
15. Added language to allow *staff secure providers* to maintain juvenile funds at the program, provided conditions are met.
16. Changed rule to allow qualified medical professionals to conduct unclothed body searches and body cavity searches of juveniles at *staff secure providers* and *reintegration providers*, provided conditions are met.
17. Removed the requirement that *staff secure providers* provide substance abuse education to all juveniles.
18. Lengthened the amount of time *reintegration providers* and *supported living providers* have to complete the juvenile's service implementation plan from five business days to ten business days.

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TALKING POINTS
SB 1300
Effect of Divorce

1. General Subject of Bill

This bill concerns the effect of a decree of divorce on various documents, planning methods such as rights of survivorship, and beneficiary designations.

2. Existing Problem

Existing Idaho law has a very limited automatic effect of divorce on various matters that should be taken care of in the aftermath of a divorce proceeding. Divorce proceedings, which used to be handled almost entirely by attorneys, now are very often handled by the parties themselves without any legal advice, using pre-made forms. Therefore, the "checklist" of matters that should be taken care of after or during a divorce proceeding is often simply missed, resulting, for example, in assets passing at the death of one of the parties totally contrary to the actual wishes of the decedent. The parties simply are not aware of the need for the changes.

3. Solution in Bill

This situation has been recognized nationally as a problem, and the Uniform Probate Code, used in Idaho, has been updated to cover those situations, protecting persons who do "pro se" divorce on their own.

The specifics of the bill:

a. In 15-2-802, on page 1, the bill corrects some technical problems in the existing language. First, in the Probate Code, the word "person" refers not only to individuals, but also to entities such as corporations, partnerships, limited liability companies and so forth. Therefore, the word "person" is changed to "individual", since only individuals can divorce. Second, on 15-2-802(b)(2), page 1 line 23, the reference should have been to an "invalid" decree of divorce, since a valid decree is covered in (b)(3), immediately below. Therefore, that word is inserted.

b. The bill adds a new §15-2-804, as Section 2 of the bill, starting on page 1, line 31, to provide detailed coverage of when probate and nonprobate transfers may be revoked by a divorce.

a. The first portion is definitions, starting on page 1, line 32. These are all common sense definitions. One of interest is on page 2, lines 8-11, to define "relative of the divorced individual's former spouse", since that term is used later in the statute. Essentially that is an individual that is related to the former spouse both before and after the divorce, but after the divorce, is not related to the divorced individual. A brother-in-law or mother-in-law would be typical examples. The definitions also clearly describe what is meant by "revocable", page 2 lines 12-19, since that is not always clear in general law.

b. 15-2-804(b), starting on page 2, line 20, defines what the effect of a divorce or annulment in a number of situations. Lines 20 and 21 make it clear that a "governing instrument", defined above, and usually a pre or post-nuptial agreement of some kind, can override the terms of this statute. This gives the parties ability to plan results contrary to the default provisions of this bill if they wish.

i. (b)(1), page 2, lines 24-37 specifies in subpart (i) that the divorce or amendment revokes any revocable disposition or appointment of property to the former spouse or a relative of the former spouse - this would mostly commonly be either estate planning documents such as wills or trusts, or beneficiary designations such as life insurance or annuities, or Pay on Death or Transfer on Death designations. It also in subpart (ii) revokes powers of appointment granted to the former spouse or a relative of the former spouse. A power of appointment most commonly allows the person to change the distribution of the property of the decedent and may be exercised in a Will or by other written methods. And finally in subpart (iii) it revokes nominations of the former spouse or relative of the former spouse to serve in any fiduciary capacity, such as Personal Representative, trustee, conservator, agent under a power of attorney, or guardian.

ii. (b)(2), page 2, lines 38-41, severs Joint Tenancy With Right of Survivorship into equal tenancies in common. Community Property With Right of Survivorship is already covered by another statute.

c. 15-2-804(c) clarifies that severance under (b)(2) does not affect third party interests in the property that are relying on the survivorship language, unless a writing declaring the severance has been noted, registered, filed, or recorded in the appropriate records.

d. 804(d), page 2 line 49 to page 3 line 4, clarifies the effect of revocation.

Essentially the former spouse or relative of the former spouse is treated as if they had either disclaimed the property right or as to a nomination had died immediately before the divorce.

e. 804(e) clarifies that if the parties remarry or the divorce is nullified, then the provisions for severance, revocation and so forth in the statute are nullified as well and the prior status restored.

(f) 804(f) limits the effects of this section purely to those circumstances described in 15-2-804 and in 15-2-803, the slayer statute.

(g) 804(g) provides protections to Payors and other third parties who rely on the written documents in good faith, even if the transfer of property by the Payor or other third party was revoked or an interest severed, etc., by the terms of 15-2-804, unless the Payor or other third party has received written notice of the claimed forfeiture or revocation under 15-2-804. (g)(2), starting on page 3, line 21, describes in detail how the written notice must be delivered and the allowed actions of the Payor or other third party after properly receiving such notice, including paying over the sums held to the court having jurisdiction.

(h) 804(h)(1), page 3 line 40 to page 4 line 3, gives similar protection to bona fide purchasers without notice who pays out or receives property from the former spouse or relative of the former spouse, but the former spouse or relative of the former spouse, or a third party who did not give value for the property, is liable for the value or return of the property.

(i) 804(h)(2) covers situations where there is preempting federal law, for example, bankruptcy or seizure laws.

4. Possible Questions

a. Why help people who choose not to have the protection of legal advice from an attorney? Many people do not have the funds to pay for legal fees of a contested divorce, which can be dramatic, or even an uncontested divorce, which can still be expensive. Or they may believe that they are in full agreement on the terms of the divorce and there are forms that appear to lead them directly and fully through the process. However, failure to be aware of the outside matters that need to be taken care of leads to future problems, legal proceedings, emotional battles, and so forth. This statute simply carries out the standard procedures that should be followed in any divorce, while still letting divorcing individuals override the provisions of this bill by written documents.

b. Will this cause problems for banks, lenders, mortgage holders, investment accounts, and so forth? No. Such third parties are protected unless they receive actual notice in proper form, so long as they act in good faith. Representatives of such industries and third

parties were involved in the creation of this bill at the national level and believe that they are adequately protected.

5. Fiscal Impact

This bill should eliminate or greatly limit future court battles caused by failure of the divorcing parties to take proper steps at the time of the divorce. This will free up court time and expenses and also reduce legal costs to individuals who often cannot afford such costs.

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TALKING POINTS
SB 1303, as amended

1. General Subject of Bill

This bill is referred to as the Revised Uniform Fiduciary Access to Digital Assets Act. This bill deals only with digital assets: examples being email; Facebook and other social media; online accounts for banking and investing; the Cloud; LinkedIn; photographs; ancestry accounts; Instagram and Twitter; online services such as Amazon and eBay; access to movies; and, many other digital accounts and property. The list is almost endless. The bill modernizes the law as to access to such digital assets by fiduciaries. Fiduciaries are persons entrusted with the legal authority to manage another person's property and with a duty to act in that person's best interest. This bill addresses four common types of fiduciaries:

1. Personal Representatives (also called Executors or Administrators) for a deceased person's estate;
2. Court-appointed guardians or conservators for a living protected person's estate;
3. Agents appointed under powers of attorney; and,
4. Trustees.

2. Existing Problem

A generation ago, our mail was delivered in person, photos were kept in albums, documents were kept in file cabinets, and money was deposited in the local bank. Now the nature of our property and our methods of communication have changed dramatically.

In general, a person's digital property and electronic communications are collectively referred to as "digital assets". The companies that store those assets are called "custodians". Access to digital assets is usually governed by a "terms of service" agreement rather than by property law.

In Idaho, and nation-wide, digital assets present unusual problems.

- The first is that with a very high percentage of people having such digital assets, and many of those assets containing vital information, both personal and business,

those assets may have real value, both monetary and sentimental. Access to those assets may be critical to continuing a business for example, or for carrying out the estate plan of a decedent. But such assets are almost always protected by passwords and restrictive terms of service agreements with the provider.

- But at the same time, digital assets present unique privacy concerns. Private communications like email and social media conversations are protected by federal privacy law. The person holding the account may or may not want a fiduciary to have access to digital assets, or may want such access restricted in various ways.
- Current Idaho law refers to digital assets only briefly and without any detail or enforceable provisions.

3. Solution in Bill

This bill is the result of years of work on the national level involving a wide cross section of the persons and entities involved in digital assets. Providers, privacy groups, consumer groups, organizations representing of fiduciaries, groups such as the Motion Picture Association and many others concerned with copyright and other such issues, and many many more. This bill is a consensus of those groups on a workable and practical solution to the many problems posed by digital assets.

In its most simple terms, this bill is a balancing of the need for fiduciaries to have access to digital assets, the need for the privacy of the holder of the account to be kept unless the holder is willing to have the account be available, and protection for the providers of the accounts.

Specifically, this bill strikes that balance by:

- a. Giving the holder of the account control. The holder is allowed to specify whether their digital assets should be preserved, distributed to heirs, or destroyed. There is a three tiered system of priorities for how consent is given:
 1. If the custodian provides an on-line tool, separate from the general terms of service, that tool allows the user either to name another person (who may be a fiduciary or may be a "designated recipient") to have access to the user's digital assets or to direct the custodian to delete the user's digital assets in the case of death or incapacity.
 2. If there is no on-line tool, or the user declines to use the tool, the user can give legally enforceable directions for the disposition of digital assets in a Will, trust, Power of Attorney, or other written record.
 3. If the user has not provided any direction, either on-line or in a traditional estate plan, the terms of service for the account will determine whether the

fiduciary may access the digital assets. If the terms of service do not address fiduciary access, the default rules of the bill apply. Those balance the user's privacy interests with the fiduciary's need for access by making a distinction between the "content of electronic communications", the "catalogue of electronic communications", and other types of digital assets.

A. The "content of electronic communications" includes the subject line and body of email, text, and other messages between private parties. A fiduciary can never access the content of electronic communications with the user's consent.

B. The "catalogue of electronic communications" is the list of communications showing the addresses of the sender and the recipient and the date and time the message was sent. For example, this might allow the Personal Representative of an estate to determine that the decedent received a monthly email message from a particular bank or credit card company, and the Personal Representative can then contact that bank or credit company to obtain account information.

4. Some types of digital assets are not communications, but rather intangible personal property. This can include files stored in the "cloud", or photos on a photo-sharing web site. In dealing with those, the fiduciary is subject to the same fiduciary duties that apply to tangible assets. For example, the Personal Representative cannot publish the decedent's confidential communications or impersonate the decedent by sending emails from the decedent's account. Other laws or restrictions may also apply, such as copyright law, federal privacy acts, and the terms of service agreement.

b. Providing uniformity. Digital assets travel across state lines nearly instantaneously, and people are mobile, relocating often. It would be nearly impossible for a user or provider or estate planner to negotiate a maze of conflicting guidelines on access to digital assets.

c. Respecting privacy interests. As stated previously, private communications like email and social media conversations are protected by federal privacy law. This bill prevents companies that store communications from releasing them to fiduciaries unless the user consented to disclosure.

d. Recognizing the different types of fiduciaries that may need access - personal representatives of an estate, agents under powers of attorney, court appointed conservators, and trustees. This removes any confusion about whether a trustee, for example, is covered by the act.

e. Requiring clear proof of authority. Generally, fiduciaries must provide proof of their authority by a certified documents.

f. Recognizing limits from federal law, such as the Copyright Act and the Electronics Communications Privacy Act.

g. Protecting custodians of digital assets that comply with a fiduciary's apparently authorized request for access, by giving them immunity so long as they act reasonably and in good faith.

4. Possible Questions

a. What were the amendments? The amendments were very simple. It was recognized after the uniform act was approved and this bill prepared, that the act applied to both fiduciaries and to "designated recipients", duly defined at the beginning of the bill - persons named to have access to the account who were not acting as a fiduciary. However, "designated recipients" were not always clearly referenced in a few parts of the bill. Therefore, the bill was amended to also name the "designated recipient" directly in a few places in the bill.

b. What about the FBI vs. Apple controversy? That is a criminal prosecution, not a civil proceeding, so the legal issue are very different. However, the Electronic Communications Privacy Act of 1986 does apply to both civil and criminal proceedings. Therefore, access to the content of electronic communications is barred. There is an exception for law enforcement agencies with a warrant or court order. In fact, the FBI has already obtained much of the information from the shooter's email service provider, and all of the phone's backed up data from Apple. The dispute arose when the FBI was unable to access other data on the phone which had not been backed up and was not available from any other source.

There obviously was no consent to release of the information by the shooter, another possible exception to the Privacy Act.

The real problem is that even if a provider is permitted by law to release private data, encryption may prevent release. Apple's latest generation of the iPhone lets a user choose a 4 digit pass-code to access the main screen. Apple does not record that pass-code and without the pass-code, the phone is useless. Additionally, as an added security feature on the iPhone, after ten incorrect attempts to enter a pass-code, the phone will automatically and permanently erase its data. This defeats "cracking" the pass-code by generating millions of pass-codes rapidly until the correct pass-code is found, a technique often used both by hackers and by law enforcement.

The FBI wants Apple to write a program that defeats automatic erasure and allows the FBI to try unlimited numbers of pass-codes. Apple has appealed on the grounds

that creating such a feature would endanger the private data of all iPhone users and would be subject to abuse.

The real lesson of the FBI-Apple battle is that access to data, even if legally available, may be worthless without additional information from the user - the user name and the password. So, if a person wants their fiduciaries to have access to their digital assets, they should provide in some manner a list of the user names and passwords for their digital assets, perhaps by having them in a list only available to the fiduciary when needed. Estate planners are working on such methods. Conversely, if the user does not want access to be given, the failure to provide that information to the fiduciary is an added layer of protection.

5. Fiscal Impact

None. This may lower court involvement in such cases, creating a positive fiscal impact.

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 02, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of February 8, 2016. **Senator Souza** seconded the motion. The motion carried by **voice vote**.
Senator Nonini moved to approve the Minutes of February 12, 2016. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

RS 24625 **Sandra Evans**, Idaho Board of Nursing introduced the legislation by number.

MOTION: **Senator Davis** moved that **RS 24625** be printed. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

RS 24646 **Michael Kane**, Idaho Sheriff's Association, reported that, at the request of the Committee, he met with individuals who had concerns about this bill and with other stakeholders. All items of concern have been deleted. This legislation is the result of those changes, and the bill text now includes the following crimes: terrorism, human trafficking, hijacking and supplying arms to a criminal gang.

MOTION: **Senator Nonini** moved that **RS 24646** be printed. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1361 **Senator Todd Lakey** pointed out that this bill clarifies which funds can be used by counties to pay for their public defenders. The three funds counties can use are the justice fund, their current expense fund and their indigent fund, or any combination thereof. This provides them with flexibility.

MOTION: **Senator Anthon** moved to send **S 1361** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. Motion carried by **voice vote**.

S 1362 **Senator Davis** explained that this bill simply corrects an overlooked sentence in Idaho Code § 10-1111 passed last year that increased the enforceability of judgments from five years to ten years.

MOTION: **Senator Nonini** moved to send **S 1362** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 491

Representative Ryan Kerby stated that this bill involves non-consensual liens, an obscure type of lien familiar to only a few individuals. It is a type of lien by which a person who becomes angry with another can victimize that person by putting a lien on the victim's property. The victim can be completely unaware of the lien until he or she tries to sell or refinance the property. He detailed the steps involved in filing this lien, pointing out that it is quick and inexpensive for the complainant, but time consuming and costly for the victim. **Representative Kerby** explained that a large group of stakeholders were involved in writing this bill that repeals Idaho Code, Chapter 17, Title 45, and adds a new section, Idaho Code § 45-811. The new section defines non-consensual liens, prohibits the use of this kind of lien, advises how to remove the lien if one is initiated, offers remedies for the victims and provides that the complainant is liable for damages suffered by the victim. The legislation also holds a clerk who inadvertently accepts and files the lien free of liability.

Senator Souza asked if it costs money for the complainant to put a lien against a house. **Representative Kerby** replied that it costs only \$35, less than the normal amount for filing a lien.

Senator Burgoyne expressed concern regarding the possibility of eliminating the use of some legitimate liens that may be needed in the future. He also felt that some of the language was unclear.

Representative Kerby introduced Stacy Pittman, Attorney at Law, who had such a lien placed on her. **Ms. Pittman** shared her story and the difficulties, expense and frustration that the situation presented.

During the discussion, it was disclosed that this type of lien cannot be filed against a public figure. **Senator Souza** asked why public figures are exempt but ordinary citizens are not. **Senator Kerby** explained that it was originally set up to protect police officers, firemen and trial lawyers who were the main targets. This bill will extend the protections to all citizens.

An extensive discussion ensued, with **Senator Davis** explaining the history of this legislation. Attention was also given to the protection of the clerk.

MOTION:

Senator Souza moved to send **H 491** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

H 429

Michael Henderson, Legal Counsel for the Idaho Supreme Court, advised the Committee that this legislation is recommended by the Supreme Court and originated with judges who preside over problem-solving courts, particularly drug courts. The purpose is to amend the withheld judgment provisions of Idaho Code § 37-2738(4) as they apply to participants in problem-solving court programs and to graduates of those programs. **Mr. Henderson** explained what withheld judgments are and that they are used as an option to imposing a judgment of conviction. The factors a court considers in deciding whether to grant a withheld judgment are:

1. the facts and circumstances of the offense;
2. whether the defendant is a first offender;
3. the previous actions and character of the defendant;
4. whether the defendant might reasonably be expected to be rehabilitated;
5. whether it reasonably appears that the defendant will abide by the terms of the probation;

6. interests of society in being protected from possible future criminal conduct by the defendant; and
7. the impact a record of a criminal conviction would have upon the defendant's future development and/or employment status.

Mr. Henderson identified additional requirements for those seeking a withheld judgment for controlled substance abuse, explaining that some of those requirements are very difficult to meet and they ignore the maturation process by granting no second chances. Idaho Code § 37-2738 was enacted in 1989 and some parts are not congruent with current programs. In view of the present use of problem-solving courts, and the emphasis on rehabilitation and returning to the community, the amendments in this bill would provide added motivation to offenders to engage in treatment and to maintain a sustainable recovery. They could also assist in making employment and educational opportunities available to offenders. **Mr. Henderson** detailed the process involved in enacting a withheld judgment for controlled substance abuse offenders and the conditions that must be met for the withheld judgment to be granted.

Senator Burgoyne asked if withheld judgments are a matter of public record. **Mr. Henderson** replied that they are. **Senator Burgoyne** inquired why the courts would not narrow the list of criteria for receiving a withheld judgment. **Mr. Henderson** stated that if they were to retain some of the requirements, but narrow them, some offenders who would benefit from a withheld judgment might be disqualified.

MOTION: **Senator Nonini** moved to send **H 429** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:50 p.m.

Senator Patti Anne Lodge
Chairman

Carol Cornwall
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, March 04, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve minutes of Wednesday, February 10, 2016.	Senator Johnson and Senator Jordan
MINUTES APPROVAL:	Approve minutes of Wednesday, February 24, 2016.	Senator Lee and Senator Souza
<u>S 1343</u>	Relating to violations of parole	Senator Lodge and Kanoa Gordon Nol
<u>HCR 39</u>	Relating to rules of the Idaho Commission of Pardons and Parole	Representative Dayley
<u>HCR 40</u>	Relating to rules governing alcohol beverage control	Representative Dayley
<u>H 495</u>	Relating to alcohol violations	Representative Gannon

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 04, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of February 10, 2016. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

Senator Lee moved to approve the Minutes of February 24, 2016. **Senator Souza** seconded the motion. The motion passed by **voice vote**.

S 1343 **Chairman Lodge** explained that Sandy Jones, Executive Director, Commission of Pardons and Parole (Commission), and Terry Kirkham from the Commission of Pardons and Parole are here to further explain and to answer questions regarding **S 1343**. **Ms. Jones** advised that this bill intends to increase public safety by ensuring the option of parole revocation for the most serious parole violations. She related that prior to the Justice Reinvestment Initiative (JRI), most parole violations resulted in revocation of parole and a return to an Idaho Department of Correction (IDOC) institution for a period of time. In order to reduce the prison population, currently parole violators, except those with new convictions, receive a 90-day return to prison for the first violation and a 180-day return for the second violation.

Ms. Jones disclosed that since the implementation of this procedure it has become clear that some parole violations present a public safety risk and would be best addressed by a full Commission hearing. These more serious violations deal with parolees with a history of sexual offenses who continue to engage in high-risk behavior, and parolees with new pending felonies or violent misdemeanors that have not been adjudicated. **Ms. Jones** pointed out that if this change is made, the Commission will continue to have the option to impose the 90/180-day sanctions if appropriate, but the public safety decision would be made by the Commission, versus an automatic sanction process.

Senator Davis stated that the wording is problematic, adding that there need to be better definitions of sexual conduct and violence. **Terry Kirkham** replied that the violations are delineated in the conditions of parole. A discussion of the definitions of terms and violations ensued. **Senator Burgoyne** offered an explanation of the provisions and unclear aspects of the bill. **Mr. Kirkham** concurred with Senator Burgoyne's analysis. **Senator Burgoyne** asked if the decision of the Commission

is appealable. **Mr. Kirkham** replied that it is not. **Senator Burgoyne** addressed the concern of a mix of law and fact in some cases, resulting in ambiguity of the charge. **Mr. Kirkham** replied that more scrutiny would be given by the Commission to those cases as some of them would be open to interpretation based on the preponderance of evidence. Further discussion was held to clarify the violations and the procedures that would be followed, with **Ms. Jones** repeating that the offense had to first be a violation of parole in order to be considered.

MOTION: **Senator Anthon** moved to send **S 1343** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion passed by **voice vote**.

PASSED THE GAVEL: Chairman Lodge passed the gavel to Vice Chairman Nonini.

HCR 39 **Representative Tom Dayley**, District 21, advised that **HCR 39** would reject **Docket No. 50-0101-1501, § 250, Subsection 05**, because the Idaho Department of Corrections (IDOC), after some consideration, decided they did not want to change the rule. **Senator Burgoyne** clarified to the Committee how IDOC's decision occurred. **Representative Dayley** acknowledged that Senator Burgoyne was correct.

MOTION: **Senator Souza** moved to send **HCR 39** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

HCR 40 **Representative Dayley** explained that **HCR 40**, regarding the use of liquor licenses, had been rejected by the House. He requested that the Senate do the same.

MOTION: **Senator Lee** moved to send **HCR 40** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nonini passed the gavel back to Chairman Lodge.

H 495 **Representative John Gannon** stated that young adults ages 18 through 20 are faced with a lifetime misdemeanor for violating the minor-in-consumption statute, i.e. possessing and/or consuming alcohol. This bill would vacate the guilt and seal the record so the young adult would not have a lifetime misdemeanor. There are conditions associated with this action. First, there must be only one minor-in-consumption violation. If the individual has two violations, he/she is not eligible. The second condition is having five years without any alcohol or drug-related violations.

Senator Souza asked why a diversionary program would not be considered instead of this approach. **Representative Gannon** replied that a diversionary program might be used. That is at prosecutorial discretion, and some prosecuting attorneys are stricter than others.

Senator Davis asked how this bill would work with **H 494**, as both of the bills modify the same code section. There was extensive discussion regarding the interaction of **H 494** and **H 495**.

MOTION: **Senator Davis** moved to send **H 495** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: **Senator Lodge** adjourned the meeting at 2:53 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 07, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve Minutes of Wednesday, February 17, 2016.	Senator Nonini and Senator Johnson
<u>RS24679</u>	Regarding fiscal notes and statements of purpose	Senator Davis
<u>H 528</u>	Regarding testing of sexual assault evidence kits	Representative Melissa Wintrow
<u>S 1373</u>	Regarding protection orders	Senator Burgoyne
<u>S 1383</u>	Regarding civil rights of persons convicted of crimes	Michael J. Kane, Idaho Sheriff's Association
<u>S 1374</u>	Regarding guardians of minors	Bob Aldridge, Trust & Estate Professionals of Idaho
<u>S 1375</u>	Regarding the delegation of powers over minors or persons with developmental disabilities	Bob Aldridge, Trust & Estate Professionals of Idaho

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 07, 2016

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES APPROVAL: **Senator Nonini** moved to approve the Minutes of February 17, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

RS 24679 **Senator Davis** stated that **RS 24679** amended Joint Rule 18 to encourage more accurate fiscal notes and statements of purpose.

MOTION: **Senator Souza** moved to send **RS 24679** to the 10th Order of Business **Senator Lee** seconded the motion. The motion passed by **voice vote**.

H 528 **Representative Melissa Wintrow** stated that **HB 528** is a collaboration of several interested stakeholders. When rape is committed, the victim experiences the trauma of the assault as well as the forensic evidence collection process. Idaho State Police Forensics Assistant Director, Matthew Gamette, called an interagency meeting to devise a plan to provide consistency in the processing of rape kits. The legislation creates a minimum standard for testing sexual assault evidence kits in the state, and it provides a reasonable time for processing. It establishes a tracking system to improve efficiency and transparency and it requires an annual report to the Legislature providing a view of how the system is working. The plan provides a clear decision making process so consistent training can be provided to law enforcement. The legislation states that all sexual assault evidence kits should be tested unless the victim expressly states that he/she does not want it tested. The other instance in which the kit would not be tested is if law enforcement determines that a crime has not been committed. The test must be conducted in 30 days and processed within 90 days. If the kit is not turned in, the county prosecutor would look at the kit and sign off on it. Idaho State Police would devise a tracking system, write the rules and determine how information would be put into a database.

Kelly Miller, Executive Director Idaho Coalition Against Sexual Violence and Domestic Violence, shared an experience of a 13-year-old girl who had been sexually assaulted and was currently addicted to meth to help dull the pain she was experiencing. Statistics show that only 15 to 30 percent of victims who are sexually assaulted report the crime to law enforcement. Three reasons for not reporting sexual assault include the individuals' coping skills, fear of future harm and the lack of trust in the criminal justice system. This bill addresses the current and future issue of backlogged evidence, offers survivors the justice they deserve and assists in holding perpetrators accountable.

Cindy Cook, representing the Sexual Assault Forensic Nurse Examiner Team (team) serving Ada County, stated that since 2001 there have been 1,592 reported sexual assaults. There were 1,274 victims who had a forensic exam and 318 who elected not to have an exam. Their team serves both St. Alphonsus and St. Lukes hospitals and any of their outreach facilities, as well as the Family Justice Center. The nurses have received specialized training and are tested on their skills (see attachment 1).

Senator Jordan asked how the nurses were able to talk to the victims about the kits and what kind of closure they could receive. **Ms. Cook** stated that they would give an explanation of the process and let the victims know that a result would not be immediate and it is a long process. They explain the investigation process and how the criminal justice system can help them. **Senator Burgoyne** asked if Ms. Cook had any perspective on how the victims feel when they find out that their rape kit hasn't been processed in time to get any results. **Ms. Cook** indicated that the timing is a very hard thing and many factors play into it. The nurses explain to the victims the benefits of having the test done and what evidence is collected, and they make the victims aware that their cases can't go far without the evidence. **Senator Souza** questioned the levels of confidentiality the victims can expect. **Ms. Cook** stated that HIPPA laws and requirements are complied with, but she indicated that at some point in the investigation the details may become public knowledge and the victim may have to testify in court.

Matthew Gamette, Assistant Director Idaho State Police Forensics Laboratory, shared a sexual assault kit with the committee. He indicated that the Idaho State Police (ISP) purchases the kits, looks at the technical requirements for them, visits with the nurses and makes sure the right kit for collection is used. For consistency, the kits are provided to all hospitals and collection entities within the State of Idaho and are free to the victims having the exam performed. There is currently no tracking mechanism for the kits. The local and county agencies collect the used kits, and when evidence is collected it is sent back to the agency that submitted it. If a kit comes into the laboratory, it gets processed. There are not piles of kits sitting in the Idaho laboratory.

According to Mr. Gamette, kit submissions have been increasing by about 28 percent per year and ISP expects that it will continue to increase. The Foresight Project in West Virginia showed that each DNA examiner can work about 59 rape cases a year. An additional two DNA staff members would be needed to process the increasing need for rape kits in a timely manner in Idaho. The cost to process each case is approximately \$3,000. With current staffing and turnaround time, it takes approximately seven months to process a non-priority DNA case. It is the desire of judges and prosecutors to see every DNA case in Idaho worked in less than 30 days. The current staff can process DNA cases in 90-120 days. They would like to hire two more staff members to speed up the processing time.

Mr. Gamette reviewed the process involved developing this legislation to address the issue of unprocessed rape kits. In June 2014, ISP sent a voluntary survey asking how many kits were in evidence collection rooms and organized a working team with individuals from varied entities involved in the evidence collection process. The working team developed a policy that included two reasons why a rape assault kit would not be submitted. The first reason is that if the victim expressly asked for it not to be processed and the second is if law enforcement determines that no crime was committed. Multiple communications were sent to communicate the policy. Once the number of kits in the field was identified, resources were secured to get those kits processed quickly and get the data into the Combined DNA Index System. ISP is not aware of any kits outside of the policy that are sitting on shelves. This legislation gives the ISP authority by statute to collect the data, promulgate rules for the collection and tell the law enforcement agencies

what the process is to accomplish those tasks. It also provides transparent public reporting on the website.

Senator Souza asked how long the samples can be held and still be viable. **Mr. Gamette** stated that if the samples are dried and protected properly, they are stable for a very long time.

Senator Johnson asked if there would ever be a circumstance where someone other than ISP would have to test the kits. **Mr. Gamette** responded that the ISP forensics laboratory, if properly staffed, would be able to test all kits in the proper amount of time. If they don't have the time to process in a timely manner, they could outsource the kits to a private laboratory but prefer not to. **Senator Johnson** asked for the definition of "health care facility." **Mr. Gamette** responded that "health care facility" is left purposely broad to cover any location where collections are taken. **Senator Johnson** asked what kind of chain of custody process is in place to meet the strict standards required for evidence in court. **Mr. Gamette** stated that tracking new kits sent to the hospitals is very important. Currently ISP does not have the ability to ask what the facilities do with the kits they are given. **Senator Johnson** inquired about what happens to the kits being collected if the victims choose not to have them processed or if a crime wasn't actually committed. **Mr. Gamette** responded that the decision is left to the agency as it is written in their individual agency policies after a consultation with the county prosecutor. **Representative Wintrow** stated that each agency has its own policies and rules to govern evidence and chain of custody of that evidence. It was determined by the committee formulating the legislation to eliminate any language about a timeline for destruction of evidence and leave that to the individual law enforcement agencies. **Senator Johnson** asked why an evidence kit would be kept if no evidence of a crime was found. **Representative Wintrow** responded that it may be the policy of the law enforcement agency to do so. **Senator Burgoyne** added that occasionally rape kits are kept in case there are other potential civil actions.

MOTION: **Senator Burgoyne** moved to send **H 528** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

RS 24679 **Senator Davis** stated that this is the rewrite of Joint Rule 18 that the Committee has looked at before.

MOTION: **Senator Souza** moved to send **RS 24679** to print. **Senator Davis** suggested that, in light of the fact that this issue has been thoroughly discussed previously, the RS be sent to the 10th Order of Business. **Chairman Lodge** asked for a vote to send the RS to the 10th Order. The vote carried by **voice vote**. **Chairman Lodge** advised that the RS will receive a Senate Concurrent Resolution number and be sent to the 10th Order of Business.

S 1373 **Senator Burgoyne** explained that **S 1373** will provide an opportunity for a civil protection order by victims of malicious harassment, stalking and telephone harassment. The bill has received technical help from the Idaho Prosecuting Attorneys Association and has the support of the prosecutors, the Women and Children's Alliance, the Idaho Coalition on Sexual and Domestic Violence, and it has also received technical help from the Attorney General's Office. **Senator Burgoyne** related that the current harassment and stalking regulations in Idaho are lacking. Unless criminal charges of stalking or harassment are prosecuted to a conviction, allowing the court to enter a no-contact order, victims have limited recourse. Recourse that is available falls into the domestic violence statute and requires a relationship between the parties, and is available only if the perpetrator threatens or commits an act causing physical injury, sexual abuse

or forced imprisonment of a family or household member. **S 1373** fills the gaps in current law that deny victims of stalking and harassment the ability to obtain civil protection orders, regardless of the relationship between the victim and the perpetrator. States vary widely in how they handle civil protection orders. **Senator Burgoyne** pointed out that all of the surrounding states have these statutes. He then mentioned a concern Senator Davis had previously that this bill went too far in directing the court about processes. In referring this question to Michael Henderson, Counsel for the Idaho Supreme Court, Senator Burgoyne was advised that the bill does not cross the line. **Senator Burgoyne** shared the story of a Meridian resident Cynthia Hilton, and her inability to receive protection against her estranged husband who was stalking her (see attachment 2).

Senator Burgoyne went on to detail what the bill would do, including providing a means by which a victim may petition for a civil protection order, obtaining an emergency protection order in case of the expectation of immediate and irreparable injury. The bill would also allow for a no-contact order which includes actual physical contact, contact or attempted contact, directly or indirectly, by oral, written or electronic means. After the petition is filed the court will hear the case within fourteen days. If the protection is granted, it can apply for up to one year. The order is entered in to the Idaho Law Enforcement Telecommunication System. Violation of the protection is a misdemeanor.

Maureen Wishkoski, Court Advocate Manager, Women and Children's Alliance, explained the fear and anxiety that victims of stalking experience, not only for themselves but also for their children. She recounted times when victims have been sent by law enforcement to the county to get protection orders, but they do not qualify. She outlined the extensive logging of information necessary in order to have the stalker arrested. A protection order can enable law enforcement and the courts to more quickly respond to stalking behavior.

Dan Dinger, Ada County Prosecutor's Office, advised that he prosecutes domestic violence cases. He also handles violations of no- contact orders and felony-level stalking cases. **Mr. Dinger** noted that the Ada County Prosecutor's Office supports the bill. He pointed out that these gaps are real and there are victims who have not had any help. Sometimes it can take weeks or even months to document incidents to prove a case of stalking. He supports the bill and feels it will fill gaps in the current law and give victims the help they need.

Fairy Hitchcock, Hitchcock Family Advocates, explained her family situation and the difficulty they had in getting assistance. She supports the bill and hopes it will give other victims help.

Jennifer Landhuis, Idaho Coalition Against Sexual and Domestic Violence, and National Center for Victims of Crime, supports this bill. **Ms. Landhuis** pointed out that stalking is prevalent in today's society; stalking happens most with 18 to 24 year olds. She shared information and statistics dealing with the prevalence of sexual assault, reasons why victims do not report and the complications of following through after the report (see attachment 3). She shared the reasons why perpetrators offend and how the stalking affects the victims. She observed that while civil protection orders can't completely solve this problems, it can provide law enforcement with a way to help.

Senator Davis remarked that Ms. Hitchcock, with her life experience, is exhibit A of what has just been outlined. He stated that she and her family are the personification of the troubles that were emphasized by Ms. Landhuis.

Greg Olson has also experienced situations comparable to those of Ms. Hitchcock. While he agrees with the goal of the bill, **Mr. Olson** stated that he sees a problem in the execution of the bill. He suggested including interviews by trained police officers and others in the system who can make sure the claims are valid. Engaging these people first in advising the perpetrator that there is a law that applies and they need to stop the stalking or harassing behavior will prevent the courts from being flooded with litigation.

Senator Jordan commented that this bill is a tool to allow officers to support the victims and to warn the perpetrators away. **Mr. Olson** replied that the specific process is not written into the law.

Savannah Goodman spoke in favor of the bill and told her story of stalking. When she was targeted by a stalker she went to the police and to the Victims' Services Coordinator. Nothing could be done because the relationship was not familial. Until she or her children were injured, nothing could be done to obtain legal protection.

Representative Clow emphasized that this bill will give victims more protection. Although the police and prosecutors have not had legal means to provide assistance to victims, this bill will give them the ability to do so.

MOTION: **Senator Souza** moved to send **S 1373** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

S 1383 **Michael Kane**, Idaho Sheriffs' Association, pointed out that this bill relating to the civil rights of persons convicted of crimes has been before the Committee before and has been discussed at length. **Mr. Kane** reported that arson, felony riot, extortion and racketeering have been removed from the list of crimes affected by the bill. All law enforcement supports it.

MOTION: **Senator Jordan** moved to send **S 1383** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

S 1374 **Bob Aldridge**, Trust and Estate Professionals of Idaho, explained that the process of conservatorship and guardianship is set out in the probate code. The process as now instituted requires court proceedings and can be expensive and time consuming. This legislation is an effort to address these situations informally. If these efforts do not work, the formal court proceedings can be used. This bill allows a parent to appoint a guardian while the parent is alive, similar to a Will in case of death. Filing is required, and detailed procedures are outlined in the document. **Mr. Aldridge** gave an explanation of the bill, section by section. In conclusion, he reiterated the need for this intervening, less formal step to avoid expense and time demands. He stated that this legislation is designed to be an immediate support for a minor when a parent becomes incapable of taking care of the child.

Senator Lee stated that we have an emergency guardianship system. She expressed concern about children who have financial assets accessible by others. **Mr. Aldridge** responded that other interested parties can intervene if they are aware of abuses of the conservatorship or guardianship.

MOTION: **Senator Jordan** moved to send **S 1374** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion.

Senator Davis disclosed that there is a bill dealing with foster parents that has come from the House. He expressed his expectations that there will be a concurrent resolution to consider foster parents. **Senator Davis** suggested that it may be wise to wait for upcoming consideration of these issues and include guardianship and conservatorship in these discussions. He stated that he agrees with the intent of this bill, but would rather see this considered by the courts in a coordinated effort with the legislature.

Senator Jordan withdrew her motion in light of Senator Davis' insights. **Senator Burgoyne** withdrew his second to the motion.

Having no motion, Chairman Lodge will determine the disposition of the bill.

S 1375

Bob Aldridge, Trust and Estate Professionals of Idaho, explained that disability rights advocates stated that they did not want "developmental disability" to be part of this legislation. There are amendments to this legislation that will remove "developmental disability" from the bill and limit it only to minors. This legislation will present a second option to parents who know who they want to nominate on a delegation based on certain criteria.

Senator Davis commented that he felt the same way about this bill as **S 1374**. He appreciates all of the work Mr. Aldridge has done but feels it should be part of the legislative review.

Having no motion, Chairman Lodge will determine the disposition of the bill.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 3:02 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

Since 2001 to this date our Sexual Assault Forensic Nurse Examiner Team, primarily serving Ada County, has been called out for:

1592 reported sexual assaults; of this total – **1274** had a forensic exam and **318** elected not to have evidence collected.

This is a community team with nurses from both Saint Alphonsus and St. Luke's hospitals. We respond and care for victims at any of our community's four Emergency Departments and our FACES Family Justice Center. Our team of Registered Nurses have all received specialized training to complete forensic exams. Each forensic exam last about 2.5 hours for a victim and about 4 hours for the nurse. The time difference is needed for drying the kit, extensive documentation, maintaining chain of evidence and care of photographs.

A forensic exam consists of a forensic interview, consents for the exam and treatment, a comprehensive head to toe assessment of the victim, a blood draw, alternative light source (ALS) inspection, documentation and photographs of any injuries, and a detailed genital assessment, including photography. Collection of evidence includes swabs collected from the mouth, external genital area, vaginal, rectal, and other places indicated in the interview or by identification by ALS. We administer medications for pregnancy prevention, and prevention of common STI's such as Gonorrhea and Chlamydia and provide referrals as needed for F/U care, HIV testing, counseling, etc.

Our victims are technically supposed to be between ages 14 to geriatric. In actuality we have cared for victims from age 12 – 87 years of age. We take care of all gender, race, and socioeconomic status. Victims show emotion during this process in many ways: crying, stoic, angrily, or emotionless. There is no end to reactions we may see. Some patients have a very hard time getting through the exam process. Increased tears are common, some are trembling and shaking especially during the genital exam. Some are terrified of needles and have a difficult time during the blood draw and injection. This is a time of crisis for the victims. They have lost control and we are trying to restore this by giving them the power and control of choice. Each sexual assault kit is representative of a victim and their desire for justice.

Thank you.

Cynthia Cook, RN, SANE-A

SAFE Coordinator

Senator Grant Burgoyne

From: Cynthia Hilton [REDACTED]
Sent: Tuesday, February 23, 2016 5:22 PM
To: Senator Grant Burgoyne
Subject: I cannot get a protection order, my story may help you.

To The Honorable Senator Grant Burgoyne:

A web-based comment was submitted by:

Name: Cynthia Hilton

Address: 935 W White Sands Dr.

City/State/Zip: Meridian, ID 83646

Phone: (208) [REDACTED] Ext.:

Email Address: [REDACTED]

Concerning: I cannot get a protection order, my story may help you.

With the following comments:

Hello Senator,

My name is Cynthia Hilton and Ive been an Idaho resident since 2002. Im contacting you because a volunteer with the WCA told me you are trying to get Idahos laws changed to catch up with its surrounding states in regards to Civil Protection Orders, and other laws. My story fits in with what I hear you are trying to accomplish.

I am going through an extremely high conflict divorce after 23 years of marriage. Im finding out Idaho laws do not protect people like me. I found a gps tracker on my car soon after I moved out of my marital home after filing for divorce. Because the car is in my husbands name, and because I have never been physically harmed by him, the court denied a protection order and no stalking charges were brought against him. I found a second gps tracker on my car in January. Again, no protection from Idaho. This past Sunday, I found 2 more gps trackers on my car! A total of 4 trackers in a 6 month period. I went to Ada Co Courthouse, again seeking a protection order that was again denied. All because I have not been physically abused. During this entire time, my husband has constantly emailed and text me harassing and emotionally abusing me.

I am suffering from PTSD, emotional abuse, and feelings of chronic anxiety and fear, and have been for some time. I have no local family support, and reaching out to long time friends has been difficult because of the slander and rumors husband is spreading about me.

I feel very, very threatened by the circumstances Im in, and I have no feelings of safety or security due to the entirety of the situation I am in. I am taking every recourse I can from the Family Law angle with the divorce. At this point, the police have said they may be able to get my husband on 2nd degree stalking and they are working on putting things together to bring about charges. But until the divorce is final, and until the stalking charges are actually in effect, I am still a sitting duck.

I am outraged and horrified at the lack of legal recourse I have had up to this point. I do not want to become a statistic of abuse or death. I have 3 more children to continue to care for. I need to be healthy and strong for them. I need to thrive and get on my feet after 23 years of being a stay home mom.

If there is anything I can do to help you make a change to Idahos archaic system, please let me know. I am

willing to do almost anything to further the cause of updating the laws so no one has to go through the living hell I have been in.

Cynthia Hilton [REDACTED] 208-[REDACTED]



March 7, 2016

Chair Patti Anne Lodge
Idaho Senate Judiciary and Rules Committee
Room WW54, Idaho Statehouse
Boise, Idaho

Re: Written Testimony in Support of House Bill 528 by Kelly Miller, Executive Director Idaho Coalition Against Sexual & Domestic Violence

Dear Senators:

The Idaho Coalition Against Sexual & Domestic Violence is a statewide nonprofit membership organization comprised of Idaho's twenty-three community and tribal domestic and sexual violence programs and an additional fifty-eight organizations providing services to individuals and families impacted by domestic violence, sexual assault, stalking and dating violence, including criminal justice agencies, culturally-specific organizations, social service and health care providers, and social justice organizations.

The Idaho Coalition enthusiastically supports House Bill 528 and was one of several stakeholders along with the Idaho State Police Crime Lab and others, who collaborated together to address gaps in Idaho's sexual assault kit testing process and the impact on individuals who have been directly affected by sexual assault, who deserve every opportunity to be heard and have their reports pursued.

Sexual Assault Prevalence

According to the Centers for Disease Control and Prevention (CDC), sexual violence is a widespread public health issue that affects men, women, and children, every day. Sexual violence can have a lasting impact on a person's physical, mental, and emotional well-being throughout their lives. The CDC reports that 1 in 5 (18.3%) women have been the victim of an attempted or completed rape in her lifetime.¹ More than three-quarters of female victims of rape were first raped before their 25th birthday; 29.9% experienced their first completed rape before the age of 18. During their lives, 1 in 71 men have experienced rape; 27.8% occurred before the men were 10 years or younger.² A recent study of 136 cases of sexual assault reported over the 10-year period, found 5.9% were coded as unfounded or false allegations. These results, taken in the context of an examination of previous research, indicate that the prevalence of false allegations is between 2% and 10%, the same percentage as for other felony allegations.³

¹ Black et. al. (2011)

² Ibid

³ False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases, David Lisak, Lori Gardinier, Sarah C. Nicksa, and Ashley M. Cote (2010).

Sexual Assault Report to Law Enforcement

The Bureau of Justice Statistics reports that only 15.8 to 36 percent of individuals who are sexual assaulted report the crime to law enforcement.⁴ Reasons for not reporting sexual assault vary among individuals, but one study⁵ identified the following areas that contribute to the low reporting rates:

Individual Coping Skills – A common response of individuals impacted by the trauma of a rape is self-blame or guilt, shame, embarrassment, and desire to keep the assault a private matter. Sexual assault and rape can turn someone's world upside down. The world is no longer a safe place. Guilt can give the false sense of control and safety. Guilt and shame are coping strategies. It is a way of saying "I can stop this from happening again." As human beings we often use guilt as a way to make sense of something – if the victim did something then this can never happen to my daughter, sister, granddaughter, or niece.

Fear of Future Harm – It is not unusual for individuals who are raped to fear the perpetrator. According to the Bureau of Justice Statistics, 60% of survivors are assaulted by an intimate partner, relative, friend or acquaintance. This rate is even higher for women who have been raped or sexually assault in college.⁶

Lack of trust in the Criminal Justice System – Many survivors of rape fear of not being believed or of being accused of playing a role in the crime, and lack of trust in the criminal justice system.

We have a responsibility to overcome these barriers and foster a justice system where anyone impacted by sexual assault is heard, believed, and validated. Sexual assault testing represents a critical component in ensuring an effective criminal justice response to sexual assault and those directly impacted.

Sexual Assault Testing Bill

When anyone reports a sexual assault to law enforcement, depending on the time that has elapsed since the sexual assault, they are asked to participate in a sexual assault forensic exam, and evidence is often collected in a sexual assault kit, commonly referred to as a "rape kit".

Each sexual assault kit, in actuality, represents a human being- someone's daughter, sister, niece, girlfriend, wife - who endured an invasive, hours-long forensic examination.

⁴ U.S. Bureau of Justice Statistics. M. Planty and L. Langton, "Female Victims of Sexual Violence, 1994-2010," 2013; Wolitzky-Taylor et al, "Is Reporting of Rape on the Rise? A Comparison of Women with Reported Versus Unreported Rape Experiences in the National Women's Study Replication," 2010.

⁵ Du Mont, J., K.L. Miller, and T.L. Myhr. "The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women." *Violence Against Women* 9(4)(April 2003): 466-486.

⁶ Fisher, AB.S., F.T. Cullen, and M.G. Turner. *The Sexual Victimization of College Women*. Washington D.C.: US Department of Justice, Bureau of Statistics and National Institute of Justice. 2000.

Anyone who agrees to this forensic exam deserves to have all of the evidence examined by the crime laboratory. Crime lab processing of sexual assault kits and all evidence, significantly benefits the individual, their family, and society.

- Testing of the DNA evidence in the sexual assault kit can identify an unknown perpetrator,
- Testing of the DNA evidence can confirm the presence of a known assailant and corroborate the victim's account of the rape.
- Testing of the DNA evidence can identify a serial perpetrator.

Sexual assault evidence testing will certainly not solve all sexual assault cases, but it has the ability to move more cases forward. And, sexual kits must be tested in a timely manner, not gathering dust on a shelf, untested.

This legislation also includes a victim-centered process for notifying individuals who have been sexually assaulted about the status of their kit. It is likely that notification about evidence from a survivor's sexual assault experience will bring to the surface strong feelings and emotions. Despite the passage of time, survivors might feel as though their assault just occurred and can relive the trauma and fear they experienced. Provisions for notification, outlined in this bill, acknowledge the potential for re-traumatizing victims and provides for a clear survivor-centered notification process.

While we still have much work to do, to change the societal norms that allow for sexual assault to occur in the first place, this bill addresses the current and future issue of backlogged evidence, it offers survivors the justice they deserve and assists in holding perpetrators accountable. We urge you to pass House Bill 528.

Conclusion

In conclusion, House Bill 528 affirms that living a life free of violence is a basic right for everyone and it goes against our values when girls and women or anyone is sexually assault and raped. All girls and women deserve the basic rights and fundamental freedoms of life, liberty, safety, and respect. And when these rights are violated, we have a duty to help.

House Bill 528 addresses all three barriers to low reporting rates by reinforcing the message that sexual assault is crime; by testing sexual assault kits to identify an unknown perpetrator and/or confirm the presence of a known assailant and corroborate the victim's account of the rape; and by building public trust and confidence in the criminal justice system by ensuring accountability for the testing of sexual assault kits.

What we do and say about crimes of sexual violence matters. By passing House Bill 528, we can more effectively respond to survivors and enhance community safety. We can minimize the shame, fear, humiliation, and, ultimately, silence that is disproportionately experienced by girls and women and people who are gender nonconforming. We can encourage all Idahoans to ultimately prevent sexual violence by engaging in discussions in our homes and communities about valuing girls and women and people who are gender nonconforming, and by promoting healthy models of masculinity. Thank you for your service to our state. If you have any questions, please do not hesitate to contact Kelly Miller, Executive Director at kelly@engagingvoices.org or 208-84-0419, ext. 306.

300 E. Mallard Drive, Suite 130
Boise, Idaho 83706
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MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 09, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Nonini** moved to approve the Minutes of March 9, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

RS 24691 **Senator Grant Burgoyne**, District 16, stated that **RS 24691** authorizes an interim committee to study the issue of the risk of bias in administrative contested cases. The Office of Performance Evaluations (OPE) conducted a study finding a 52 percent moderate to high risk of bias in contested cases (see attachment 1). **Senator Burgoyne** explained the process and purpose for administrative hearings and summarized the OPE report highlights (see attachment 1). The OPE recommended that the Legislature establish an interim committee to study the case changes, wherein the Legislature found the level of bias risk unacceptable. This legislation authorizes the Legislative Council to appoint an interim committee to conduct a study of potential approaches to mitigate the risk of bias in contested cases.

Representative Lynn Luker, District 15, concurred with Senator Burgoyne's presentation. He advised that a legislative study group was formed last year, but the OPE chose risk of bias in administrative contested cases as the focus of their study, so the Legislature did not continue with their study. The report is helpful as it narrows the focus of contested agency cases.

MOTION: **Senator Davis** moved to print **RS 24691** and send it to the 10th Order of Business. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

S 1388 **Senator Davis** explained that within the last year an Idaho Supreme Court finding revealed issues with the interpretation of statute regarding tax deeds and their effect on third-party easement owners. He introduced Christopher Meyer, Idaho Association of Highway Districts.

Mr. Meyer told the Committee that when a property owner does not pay the tax bill for three years, the county will file a tax lien, receiving a tax deed for the property. In a December 2014 case, *Regan v. Owen*, the Idaho Supreme Court interpreted Idaho Code § 63-1009 to provide "absolute title, free and clear of all encumbrances." Previously, this was interpreted as being "free and clear of all mortgages" to allow the property to be marketable, and the mortgage holder was notified. The new finding destroyed third-party easements such as:

- private right-of-way,
- public roads and rights-of-way,
- utility easements,
- ditch rights, and
- conservation easements.

The third party in *Regan v. Owen* was not notified of the tax lien so was unable to respond. **Mr. Meyer** pointed out that although this case dealt with a private right-of-way, it would also be applicable in the above mentioned situations. He then advised that this bill will require notice to other interested parties in order to preserve interests that existed prior to the lien.

MOTION:

Senator Anthon moved to send **S 1388** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 439

Representative Christy Perry, District 11, pointed out that the Legislature previously recognized the cost of appellate representation in felony cases was a burden on Idaho counties. In order to reduce that burden while providing competent counsel for indigent defendants in appellate proceedings, the State Appellate Public Defender Office (SAPD) was established in 1998. She provided a summary of how the SAPD has functioned in the role of defending the indigent defendants and limitations that have been encountered.

H 439 amends Idaho Code § 19-870, explained **Representative Perry**, to provide that SAPD shall provide representation for interlocutory appeals and revise provisions relating to post-conviction relief and habeas corpus proceedings. The passage of the bill will establish in statute the historical practice by the SAPD.

Senator Davis asked what the role of the SAPD would be in the instance of ineffective assistance of counsel in a case brought in federal court. **Representative Perry** deferred the question to Sara Thomas. **Sara Thomas**, State Appellate Public Defender, said that the SAPD has no role in federal habeas corpus proceedings. She added that the SAPD does have an ongoing ethical obligation to cooperate with new counsel.

MOTION:

Senator Burgoyne moved to send **H 439** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Representative Perry detailed the history leading up to this bill beginning with the 1963 Supreme Court decision of *Gideon v Wainwright* that said all people have a right to counsel regardless of their ability to pay. This right was extended to the individual states through the equal protection clause of the 14th Amendment. She identified a number of changes that have been made and laws that have been passed. The Public Defense Commission (Commission) was established to address the inadequacies in the public defense system and the costs thereof. The goals were:

- ensure constitutional defense to Idaho citizens equally across the State,
- ensure quality of services through the creation of standards, and
- maximize existing resources such as courts, counties and the Odyssey case-management system.

The major issues to be considered were:

- administration,
- funding, and
- oversight and enforcement.

Senator Todd Lakey, District 12, explained that this bill is the result of a three-year effort by stakeholders. Based on their ideas and concerns, it seeks to establish consistency for public defense across the State. He stated that the bill is only a start with respect to funding. **Senator Lakey** emphasized that the Legislature needs to be committed to continue to fund the public defense services as we adopt specific standards for Idaho's public defense system.

Senator Lakey detailed the provisions of the bill dealing with

- case load,
- independence of representation,
- communications with clients,
- education and training, and
- supervision of defense attorneys.

He indicated that these are the foundational principles upon which the Commission will, through negotiated rulemaking, develop the specific standards for caseload, workload, training and the type of case a particular attorney can handle. The bill will maintain services at the county level and establish a voluntary grant process wherein the counties can apply to the Commission for additional funds if needed.

Senator Lakey said the Commission will continue to provide education. The Commission is responsible for review and analysis of whether the counties are meeting the particular standards that apply to them. Under this bill, if a county is not functioning properly, the Commission can become involved in a process to correct the deficiency. If the situation cannot be rectified, the Commission ultimately can take control in order to protect the State's responsibility to provide public defense.

Senator Davis inquired if there are other states using a similar process. **Senator Lakey** replied that the Commission investigated the programs of other states and decided to use Michigan as the model. **Senator Davis** asked if the rules are subject to legislative review. **Senator Lakey** responded that they are. **Senator Davis** expressed concerns with regard to counties wanting to run their own program. **Senator Lakey** related that the proposed system allows for negotiation and assistance to remedy a situation when a county is out of compliance. This allows the county to maintain control if they comply and the State to have legal protection if necessary.

Senator Lee asked if the Idaho Bar Association (IBA), rather than the Commission, could oversee this process since it deals with a specific group of attorneys. **Senator Lakey** answered that the IBA deals with professional rules and ethics, but not for analyzing this type of situation or for enforcement.

Senator Johnson asked about the temporary procedures and how long they stay in place. **Senator Lakey** explained that it is until formal rules, forms and standards are in place. It enables the counties to establish temporary rules to get grant money this year.

TESTIMONY:

Former Representative Darrell Bolz, Chairman of the Public Defense Commission, advised that he had written to the Governor in support of this bill (see attachment 2). He stated that this is an initial step and the Commission will continue to work with the Legislature to make improvements.

Daniel Chadwick, Executive Director, Idaho Association of Counties, stated that the counties could not reach a decision to support or to oppose the legislation. **Mr. Chadwick** complimented Representative Perry, Senator Lakey and Mr. Bolz on their patience and commitment to the work. He emphasized that all involved need to rely on the rules.

Kimberly Simmons, Public Defender, Vice President of Idaho Association of Criminal Defense Lawyers, stated that the Association is in favor of **H 504**. She stated that the bill addresses deficiencies in the current system and is a necessary step for public defense reform in the State.

Kathy Grismeyer, Idaho American Civil Liberties Union (ACLU) public policy strategist, spoke in support of the bill and provided background information on the issues (see attachment 3). She stated that this legislation provides standards for public defenders, makes available grant money that can be awarded to counties and holds counties accountable when they are not in compliance. She pointed out that this is a foundational first step in addressing systemic inadequacies with the current system. **Senator Johnson** asked Ms. Grismeyer if she will be part of the process. **Ms. Grismeyer** stated that she hoped to be able to personally attend as part of her role with the ACLU as policy strategist and serving as the Legislative liaison. She stated that she has attended Commission meetings in the past and plans to continue doing so throughout this process, so yes.

Robin Crisler, ACLU, shared his experience as a criminal defendant. He emphasized the need for a proper defense and is in support of **H 504**.

Senator Burgoyne explained his experience as a public defender and believes that public defenders believe in the rule of law in order to examine a case thoroughly and determine if there actually has been a crime. He stressed that this legislation is extremely important.

MOTION: **Senator Burgoyne** moved to send **H 504** to the floor with a **do pass** recommendation. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 2:40 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary

Risk of Bias in Administrative Hearings

Report highlights

February 2016

A risk of real or perceived bias is present in all administrative hearings. Idaho agencies have implemented a variety of safeguards to mitigate this risk.

The issue

Administrative hearings are quasi-judicial processes in which agencies may perform the roles of investigator, prosecutor, and judge.

An unbiased hearing officer ensures citizens' constitutional right for due process.

Idaho has a decentralized hearing system. Proponents of two hearing systems argue:

1. Decentralized systems allow agencies to conduct hearings with subject-matter expertise through authority delegated to them by the Legislature.
2. Centralized systems improve fairness, quality, and efficiency by creating an independent agency to preside over hearings.

Factors that increase potential bias

The agency performs multiple administrative roles and conducts hearings.

The hearing officer is an agency head, contractor, or employee of an agency with multiple roles.

Safeguards that mitigate potential bias

Ability to disqualify hearing officers

Judicial review before the courts

Conflict of interest policy

Ex parte communications policy

Professional code of ethics

Hearing officer training

Federal review

Organizational, physical, or functional separation of employee hearing officers

De novo review by the courts

Findings

For fiscal years 2011–2015, agencies reported:

52,488 administrative hearings were for 93 actions (e.g., decisions, rules, or functions agencies use to carry out responsibilities).

60% of the hearings were for one action—unemployment determinations.

Confirmed instances of bias in Idaho Supreme Court opinions were rare.

The appeal rate of administrative hearings was less than 1%.

The risk of bias was either low or moderate in 85% of the 93 agency actions.



1. High-risk actions had hearings typically conducted by the agency head.
2. Safeguards and levels of agency appeal, which mitigate risk, were less available for high-risk actions.
3. Even though 15% of actions were high risk, less than 1% of total hearings conducted were for high-risk actions.



Recommendations

Strengthen safeguards to improve internal practices and give citizens extra assurances of receiving a fair hearing.

Consider whether to implement a centralized hearing system.

Establish an interim committee to coordinate any changes and ensure agency perspectives are well represented.

View the report: www.legislature.idaho.gov/opec/





PUBLIC DEFENSE COMMISSION

The price of freedom is eternal vigilance.

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Darrell G. Bolz, Chair
Juvenile Justice Commission

Sara B. Thomas, Esq., Vice -
Chair
State Appellate Public Defender

Rep. Christy Perry
House of Representatives

Commr. Kimber Ricks
Idaho Assoc. of Counties

Linda Copple Trout
Idaho Court System

William H. Wellman, Esq.
Defending Attorney

Sen. Chuck Winder
Senate

Vacant
Executive Director

February 22, 2016

Honorable C.L. "Butch" Otter
Capitol Building, Room W223
700 W. Jefferson St., P.O. Box 83720
Boise, ID 83720-0034

Governor Otter:

The Idaho Public Defense Commission met on Friday, February 19th to discuss H0504, legislation from the Public Defense Interim Committee. The Commission was unanimous in its decision to support the legislation as an initial step toward resolving Idaho's public defense inadequacies, but there were some concerns expressed about items in the legislation. Some of the concerns were:

- (1) Whether the additional 4.5 FTE's identified in the fiscal impact statement would be sufficient to accomplish what the legislation requires of the Commission. The Commission had previously informed the interim committee that to fulfill it's duties of processing grants and reviewing the provisions of services it would need a liason in each of the seven judicial districts as well as an assistant director. The recommendation for only 3.5 liaisons leaves the Commission concerned about its ability to fulfill its obligations.
- (2) Timelines in the legislation in regards to the Indigent Defense Grants. The timeline appears to be short for the number of potential grants which the Commission will need to review. The legislation requires the Commission to review all grants within 60 days. If all forty-four counties apply for a grant it will be difficult to ensure adequate review within 60 days, especially in the absence of a liason for each judicial district.
- (3) The salary of the Executive Director (in the proposed budget) may be too low for the Commission to be able to attract an individual of the quality which we feel will be necessary to accomplish what is in the legislation. It needs to be noted that the Commission might be able to supplement the salary in our current budget with some of the funds proposed for the assistant director in the proposed budget used to create the fiscal impact statement of the legislation.

Rest assured that the Commission understands that this is a positive step forward in being able to meet the Constitutional requirement of the 6th Amendment. We also know that the improvement of the indigent defense system is an on-going process with more steps to come. As we go forward we will need to closely examine what does and does not work and make improvements to enhance the system.

The Commissioners are committed to meeting the requirements of H0504 to the best of their ability.

Sincerely,

Darrell Bolz
Chairman, Idaho Public Defense Commission

CC: Senator Lodge, Chair, Senate Judiciary, Rules & Administration Committee
Representative Wills, Chair, House Judiciary, Rules & Administration
Committee
Senator Lakey, Co-Chair, Public Defense Interim Committee
Representative Perry, Co-Chair, Public Defense Interim Committee



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**Testimony of Kathy Griesmyer
HB 504 – Public Defense Reform
Before Senate Judiciary & Rules Committee
March 09, 2016**

The ACLU of Idaho stands before you today in support of HB 504 which creates a system of foundational reforms aimed at addressing Idaho's broken public defense system.

In 1963, the United States Supreme Court in *Gideon v. Wainwright* established that the Sixth Amendment requires states to provide effective representation for criminal defendants who are unable to afford an attorney. The Court eloquently stated "[i]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him," adding that "lawyers in criminal courts are necessities, not luxuries."¹

Since that monumental court decision, and despite Idaho's early support for the Supreme Court's ruling, Idaho has developed a patchwork quilt of underfunded and inconsistent systems that vary greatly across the state, which has resulted in a public defender delivery system that is likely unconstitutional. In 2008, the National Legal Aid and Defender Association was brought to Idaho at the request of the State's Criminal Justice Commission to assess the status of indigent defense services throughout the state. Over the next two years, the NLADA studied seven counties and determined that the "state of Idaho fails to provide the level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts."²

Since the publication of the NLADA study in 2010, the Idaho Legislature has grappled with how to address its broken public defense system and provide relief for Idaho counties who have been tasked with overseeing the state's constitutional responsibility. From the establishment of the Public Defense Interim Committee, the prohibition on flat fee contracts, to the creation of the Public Defense Commission, this committee has moved forward symbolic, yet non-substantive legislation to address this constitutional crisis.

However, the introduction of HB 504 represents the first substantial piece of legislation aimed at addressing the serious failings of our public defense system—legislation that we hope will provide the long-sought after relief that public defenders and indigent defendants have been seeking for over five years.

Our support of this legislation rests on three important factors.

¹ *Gideon v. Wainwright*. 372 U.S. 335. Supreme Court of the United States. 1963. *Supreme Court Collection*. Legal Information Inst., Cornell U. Law School. Web. 25 Feb. 2016.

² *THE GUARANTEE OF COUNSEL Advocacy & Due Process in Idaho's Trial Courts - Evaluation of Trial-Level Indigent Defense Systems in Idaho*. Rep. N.p.: National Legal Aid & Defender Association, 2010. Print.

1. Section 19-850 (vii) outlines rules to be promulgated by the Public Defense Commission that set standards for public defenders to utilize. These standards are drawn from the American Bar Association's Ten Principles of a Public Defense Delivery System, which "constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney."³ Standards such as maintaining a public defense system independent from political and judicial influence, providing defending attorneys sufficient time to meet with their clients prior to trial, opportunities for continuing legal education, and supervision of defending attorneys to ensure compliance with standards are critical components of a constitutionally-sound public defense system.
2. The creation of §19-862A (2) establishes the process by which counties can apply for a state indigent defense grant, supplementing their current budgets with additional dollars awarded by the Public Defense Commission, in exchange for compliance with the indigent defense standards. These grants are crucial in providing the monetary relief counties across the state have been seeking. Many counties are nearing the maximum level of their justice levy funds and with growing costs for providing defense, along with increases in prosecution rates, they are finding themselves unable to afford a public defense system that meets constitutional requirements.
3. Part (11-14) of §19-862A outlines the enforcement mechanism crucially needed in ensuring compliance with the Public Defense Commission's standards, as provided in §19-850 (vii). The mediation process outlined in these subsections provides for adequate notice for non-compliant counties to address their deficiencies, establishes sufficient due process for aggrieved counties, and ultimately grants the Commission authority to intervene and provide public defense services if needed, ensuring further protection of indigent defendants' Sixth Amendment rights.

While the ACLU maintains its support for HB 504, it serves *only* as a critical first step in providing relief to counties, public defenders, and most importantly, indigent clients. We recognize, for instance, that a roughly \$5.48 million allocation of funds is far below where funding levels should be to ensure actual compliance with basic standards.

Throughout the interim committee meetings, the Sixth Amendment Center was brought in to provide expert testimony and estimated that the state's funding responsibility would be \$20-30 million, above the current \$24-26 million paid by the counties, to meet constitutional standards at the current level that prosecutors are charging crimes. Although this legislation marks the first time state dollars have been allocated to fund trial-court-level public defense across the state, we expect that this financial allotment will do little in assisting the counties and public defenders in meeting the newly outlined

³ *ABA Ten Principles Of a Public Defense Delivery System*. Rep. American Bar Association, Feb. 2002. Web. 25 Feb. 2016.

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.authcheckdam.pdf.

standards. We also echo the concerns that the Idaho Association of Counties have expressed: without substantial additional funding, and further work by the Public Defense Commission and this legislature, this bill imposes an unrealistic burden on local jurisdictions and simply will not fix Idaho's system.

Upon passage of this legislation, the Public Defense Commission will be tasked with full oversight and enforcement power of public defense delivery systems in the state – from creating standards, to providing ongoing training for attorneys, to issuing funding grants to counties, and ultimately serving as administrator for compliance. So far, as the courts have already observed, the Commission has failed to comply with its legislative mandates. Accordingly, the actual implementation of this bill will be crucial. Throughout this implementation process, the ACLU will remain vigilant, both in court and in our work with lawmakers, and will be closely monitoring each subsequent step outlined in HB 504.

Since 2010 and the release of the NLADA study, the ACLU of Idaho has diligently stood before this committee, the Public Defense Interim Committee, and the Public Defense Commission asking for an end to this crisis for Idaho families, communities, and economies. For too long, indigent Idahoans have gone to trial without an adequate defense in place—or plead guilty and not gone to trial at all—because their public defender was over-worked, under-paid, and left with inadequate resources to contend with the prosecutors, police, sheriffs, investigators, witness coordinators, experts, laboratories, and support staff on the government's side. HB 504 begins to shift this imbalance and provide public defenders with the standards, funds, and ongoing training necessary to adequately defend their clients in Idaho courtrooms. This bill is long overdue and we welcome its passage. Make no mistake though: if this is all that Idaho does to address the ongoing crisis, it will fall far short. Not only must the Public Defense Commission vigorously tackle the tasks set out in this bill, this legislature and the counties will both also have to vigorously continue to solve the problems we have long documented and that the underfunding of this bill will itself create.

With those important caveats, we respectfully ask that you vote yes and move HB 504 out of committee with a do pass recommendation.

AGENDA
SENATE JUDICIARY & RULES COMMITTEE
1:30 P.M.
Room WW54
Friday, March 11, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL:	Approve minutes of Wednesday, March 2, 2016	Senator Burgoyne and Senator Anthon
JUDICIAL APPOINTMENT:	Phone interview with Reed W. Larsen, appointed to the Judicial Council by the Idaho State Bar - 1:30.	Reed W. Larsen
<u>H 555</u>	Relating to sexual exploitation of a child by electronic means	Representative Greg Chaney
<u>H 521</u>	Relating to limited use immunity for minors in a medical emergency	Nate Fisher, Assoc. Students of University of Idaho
<u>H 503</u>	Relating to trust deeds and the definition of "trustee"	Representative Luke Malek

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 11, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

**ABSENT/
EXCUSED:** Senators Davis

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Burgoyne** moved to approve the Minutes of March 2, 2016. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**JUDICIAL
APPOINTMENT:** **Phone Interview with Reed W. Larsen, appointed to the Judicial Council (Council) by the Idaho State Bar.** **Reed W. Larsen**, attorney, testified concerning his appointment. **Chairman Lodge** inquired why Mr. Larsen wanted to be on the Council and asked him to identify his goals. **Mr. Larsen** answered that he respects the Council, has worked with the Council during his time with the Idaho State Bar and wants to continue the work that they have done. **Chairman Lodge** asked if there were further reasons Mr. Larsen felt he would be a good fit on this Council. **Mr. Larsen** noted that he has been practicing law for 31 years in work mostly related to trials. He stated that he has a good temperament to work with others and find solutions to problems.

Senator Jordan commented that one of the most difficult functions of the Council regards dealing with complaints. She asked how Mr. Larsen would deal with these complaints. **Mr. Larsen** indicated that it is important for the public and for individuals to know that complaints made to the Council are taken seriously. It is also important for sitting judges to know that they will get fair treatment in any complaint. He explained that his background in litigation will bring a well-balanced approach to the Council for these complaints.

Chairman Lodge commended Mr. Larsen on his 2015 State Bar Professionalism Award. **Mr. Larsen** indicated that he was inducted into the American College of Trial Lawyers while in Hawaii.

Senator Burgoyne highlighted Mr. Larsen's outstanding reputation and the high regard he has among other attorneys. He remarked that he has a great amount of confidence in the Council and in Mr. Larsen. He stated that Mr. Larsen will guard the need for judicial independence zealously while on the Council. He noted that this position calls for a sense of judicial discipline, strong judgment and a sense of justice, all of which Mr. Larsen possesses.

Chairman Lodge indicated that the Committee will vote on Mr. Larsen's appointment at the next meeting.

Relating to Sexual Exploitation of a Child by Electronic Means.

Representative Greg Chaney presented this bill that relates to "sexting" between minors. Idaho Code is silent on "sexting." He noted that the law that most closely resembles this bill is Idaho Code § 18-1507. He defined "sexting." Studies show that approximately 40 percent to 50 percent of high school students engage in this activity. This bill will remove the potential for a minor charged with "sexting" to be required to register as a sex offender. This bill does not approve of "sexting," but makes this crime a misdemeanor instead of a felony. He noted that this statute does not make exception for those who self-produce and distribute sexually exploitative material. **Representative Chaney** noted that the current statute has been successfully used to prosecute a similar charge of distributing obscene material to minors. The bill states that the distribution has to take place from Minor A to Minor B. If the content is spread to social media and has a farther distribution, then the Minors would be charged with a misdemeanor for a 1st offense and a felony for a 2nd offense. He noted that a redistribution of the material by the receiving minor would be considered a felony under current statute. The bill states that extortion, bullying or blackmailing regarding these communications would result in felony prosecution.

Senator Anthon asked if a minor participates in "sexting" on multiple occasions, would that ever result in a felony. **Representative Chaney** answered that if the "sexting" occurs on a one-to-one level, then it would never result in a felony. **Senator Anthon** asked what would happen under this bill if the intended recipient was an adult. **Representative Chaney** answered that this bill would not govern that situation and the minor would be back under the jurisdiction of Idaho Code § 18-1507. **Senator Anthon** asked if this is what is intended. **Representative Chaney** replied that the intent of Idaho Code § 18-1507 is to be a tool to protect minors. This bill simply exempts minors from the harsher punishment. **Senator Anthon** asked about the scenario where a 15-year-old sends a photograph to a 20-year-old and if this bill would protect the sender from prosecution. **Representative Chaney** responded that there would still be an ability to prosecute that individual under Idaho Code § 18-1507.

Senator Burgoyne asked for a walk-through of certain portions of the bill and how the offenses cited in this section would be prosecuted currently without this bill. He asked if all the conduct described in these portions would result in felony prosecution currently. **Representative Chaney** answered that the prosecutor may choose how to prosecute these offenses, but if there is a strict interpretation of the current law, all of the activities alluded to could be charged under Idaho Code § 18-1507 as felonies.

Senator Burgoyne asked how section 3B is different from 1A in the bill. **Representative Chaney** explained that section 3 goes into effect when an image goes farther than the original recipient. **Senator Burgoyne** asked for clarification regarding Minor B in the bill. **Representative Chaney** indicated that Minor B is the original recipient of a "sexting" message. Once that message is forwarded on by the recipient (Minor B) the situation becomes a felony for Minor B. **Senator Burgoyne** commented that this was not clear from the language of the bill. He asked if the Legislature wants the first offense of "sexting" on a one-to-one basis to be a crime rather than an infraction. **Representative Chaney** answered that in the discussions that led to the bill in its present form, the idea of an infraction was brought up. He noted that the Idaho Prosecuting Attorneys Association (IPAA) had representatives in the audience that would testify later on the bill.

Senator Souza asked if a minor sends a "sexting" picture out on social media, is it a misdemeanor the first time and a felony the second time, or is it a felony the first time. **Representative Chaney** answered that the first time would be a misdemeanor and the second time would be a felony. **Senator Souza** asked if the same consequences would apply to the initial receiver of a one-to-one communication who later puts that picture on social media. **Representative Chaney** for the recipient found in possession it is just a misdemeanor, but any distribution of these photos is a felony. **Senator Souza** asked what would happen if the recipient received the illicit communication unknowingly or did not know it was on their Facebook. **Representative Chaney** pointed out that the word "willful" is in the bill. There has to be a degree of consent. **Senator Souza** asked for clarification about the bullying section of the bill. **Representative Chaney** noted that Senator Souza was talking about ideas contained in sections 3B and 3C. The redistribution of the photo is a felony. To harass the original sender, or to blackmail that person, is a felony. These sections acknowledge that the original thought to send the picture is a product of poor judgement, but that these sections cover the malicious intent of others.

Senator Anthon noted that the willful possession mentioned on line 26 is a misdemeanor, but then the text goes to felony language. He asked why there is no language in the other sections about willfulness. **Representative Chaney** answered that it is virtually impossible to display volition without willfulness being displayed. **Senator Anthon** commented that he has received images that he does not willfully want and that this is pretty common. **Representative Chaney** explained that section 3B of the bill deals strictly with redistribution, not possession. There has to be a willful volition to act to redistribute. **Senator Anthon** noted that if a person sends a photo to someone's Facebook page, it is now arguably displayed for all the recipient's friends outside of the recipient's willful act. **Representative Chaney** noted that if you did not post the image yourself, but are instead tagged or it is posted to your wall, then you are still protected.

Senator Jordan indicated that the word "display" did not constitute redistribution in her mind, but if a minor saw a picture posted to his/her wall and then told friends to come look at the computer screen, that would be redistribution. She asked if there are freedom of speech issues embedded in this bill. **Representative Chaney** pointed out that obscenities of minors is a settled issue regarding freedom of speech. The State has every right to regulate obscene images of minor persons. He noted that this does not apply to adults. He reiterated that it is a felony currently to be in possession of these images or to show them to friends. He stated that this type of behavior will be adjudicated with reason and not just in a vacuum.

Senator Burgoyne stated that he has problems with the word "willful." He noted that there is no explicit language in section 3 that states the conduct has to be willful. There seem to be incongruencies between sections. He asked what crime is committed when two 17-year-old minors expose themselves to each other. **Representative Chaney** reiterated that the other sections require volitional acts. He replied that there is no crime when this happens. The only crime occurs when photos are proliferated. **Senator Burgoyne** stated that he had a problem with this bill in that two 17-year-old minors have not committed a crime when they expose themselves to each other in person, but having it be a crime if they use a cell phone. He remarked that this statute is not very understandable and may need better language. He is uncomfortable with the prospect of handing out a felony based on the lack of language for willfulness.

Senator Lee asked for clarification on the intention of the bill. She spoke about a bullying scenario where "sexting" pictures are used as blackmail. She asked if the person being blackmailed could open herself up to a felony if she goes to the police for help under the current statute. **Representative Chaney** answered that this was the case. Both the blackmailer and the person being blackmailed would be felons under the current statute.

Senator Souza asked for Representative Chaney's response to a hypothetical scenario for clarification on the bill. **Representative Chaney** responded that Senator Souza's understanding of the bill as stated in the hypothetical scenario is correct.

Senator Burgoyne remarked that stopping exploitation is important, but that this bill does not get to this issue. He reiterated that the lines between misdemeanors and felonies is not clear. He explained that young women will not appreciate the difference between misdemeanors and felonies and so they will not step up to fight the bullying. He stated that there needs to be a clear difference between stupid things that make people victims and things that are done on purpose.

TESTIMONY:

Holly Koole Rebholtz, Idaho Prosecuting Attorneys Association (IPAA), testified in support of the bill. She introduced John Dinger.

John Dinger, Ada County Prosecutor, testified in favor of this bill. The cases Mr. Dinger usually works with are adult internet crimes against children. He spoke about the usual process that "sexting" cases follow. He noted that most of these situations are taken care of outside of the judicial system by parents. If parents do not take care of it, then the case goes to diversion. In diversion, the phone of the juvenile is taken away and that minor is required to take a sexual boundaries class. In order for this diversion to take place, there has to be a misdemeanor charge associated with it. He noted that charging a minor under Idaho Code § 18-1507 is rare. This is reserved for the most extreme cases. This bill would help minors avoid registration as sex offenders. Children as young as 10 years old have been "sexting." **Mr. Dinger** explained that a deterrent needs to be there so that a victim's life will not be compromised forever. Otherwise, bullying and blackmail can occur. This is child pornography and can ultimately get into the hands of predators and lead to molestation.

Mr. Dinger noted that everything has to be willful and have intent. He stated that he would not prosecute for possession if someone sent an explicit picture and the person receiving it deleted it. Prosecutors would look at the circumstances surrounding a picture. He commented that this bill would not apply to the situation when a child sends pictures to an adult. Usually the children in these cases are viewed as the victims, and victims are not charged. There have only been two cases in his career where Mr. Dinger has sent the child to be prosecuted.

Senator Burgoyne asked about the willfulness issue. **Mr. Dinger** responded that intent deals specifically with distribution to others. He talked about the "reason to believe" language and how that applies to social media. **Senator Burgoyne** asked if there would be anything wrong with amending the bill to provide more defined language so that the perpetrators can be prosecuted, but not the children or victims. **Mr. Dinger** stated that this would be a better question for Representative Chaney. He reiterated the IPAA's support for this bill.

Senator Jordan asked if any minor has been charged as a felon or if there is a possibility of this happening. **Mr. Dinger** commented that in Ada County not one of the boyfriend-girlfriend scenarios has been prosecuted under the current statute. The only case where a minor has been charged with a felony is in the case of a child prostitution ring and this was the only way to stop the minor from sending out these pictures.

Senator Souza noted her appreciation for the work done on this bill to remediate "sexting." She asked about the possibility of placing language in the bill to address the difference between one-to-one sharing verses sharing the picture on social media. She referred to the earlier scenario regarding the three middle school children and asked what would happen to them under the current statute. **Mr. Dinger** answered that in the scenario provided, the first minor made the choice about taking a picture of her body. The boy who received the picture and then sent it on is more abusive, because it is not his body in the picture. He stated that currently all three would be charged with felonies. **Senator Souza** indicated that she is concerned with intent of individuals. There needs to be more education regarding this "sexting" problem to make children aware of the consequences.

Senator Anthon asked for clarification of the function of the bill. He asked about the difference in age mentioned in section 2. **Mr. Dinger** stated that this section is looking at the possessor of the image and not the sender. He explained that the three year indication language prevents the scenario where a much older minor is asking a much younger minor to send explicit pictures. **Senator Anthon** asked about cases where the minor sending these types of pictures to adults is not the victim and how these minors are charged. **Mr. Dinger** answered that he did not know because those cases were referred to the juvenile prosecutor. He reiterated the rareness of charging a minor under the current statute.

Representative Chaney noted that he had spoken with a juvenile public defender who describes the initial charging for these actions as more commonplace. He reiterated his perspective on the intent language. He spoke about the worst case scenario for charging a minor currently is that the minor is charged with a felony that carries sex offender registry with no chance for expungement. He commented that this bill is a better way of doing business than the current statute. Improvements can be made as time goes by, but this is a good step in the right direction.

MOTION:

Senator Jordan moved to hold **H 555** in Committee. **Senator Burgoyne** seconded the motion.

SUBSTITUTE MOTION:

Senator Lee moved that **H 555** be sent to the 14th Order for possible amendment. She stated her concerns with the bill in its current form. **Senator Anthon** seconded the motion. He commented that something needs to change in the bill to take the charging of a minor in this situation out of the hands of the prosecutor. He remarked that the Idaho Supreme Court has said that there must be the same language throughout the bill. **Senator Souza** stated that Representative Chaney did a good job of describing the problems with the current situation.

Senator Johnson asked Senator Jordan what the purpose was to hold the bill in Committee. **Senator Jordan** responded that she thought the bill might need more work than what the 14th Order might allow. She noted that if the other senators are willing to work towards amending the bill, then she is agreeable to that. **Senator Burgoyne** agrees with Senator Jordan and will support the substitute motion. He commended Representative Chaney for bringing this legislation.

**VOTE ON
SUBSTITUTE MOTION:**

The substitute motion carried by **voice vote**. **Senator Lee** will be the sponsor.

H 521

Relating to Limited Use Immunity for Minors in a Medical Emergency.

Nate Fisher, Association of Students of University of Idaho, explained that **H 521** provided limited immunity from misdemeanor charges for minor consumption and minor possession of alcohol when there is a need for medical help. This bill does not provide protection from any concurrent crimes or actions such as driving under the influence, disorderly conduct, property damage or illicit drug use. This bill was prompted by deaths that could have been prevented by phone calls to 911. He noted that surrounding states, except Wyoming, have passed similar bills and ten other legislatures are currently looking at legislation similar to this (see attachment 1). He explained that this bill was created after exploring the possibility of addressing the issue on the city level revealed that the State level is the proper place for this legislation. He noted that the major four year educational institutions have worked together on this bill, as well as the IPAA, the Fraternal Order of Police, the Sheriffs' Association and other groups. He noted that a petition to pass this bill has received approximately 1,500 signatures and more than 200 comments. **Mr. Fisher** highlighted a study from Cornell University relating to the injuries from unreported alcohol consumption. Fear is a leading cause for students to not call 911. Those institutions that have implemented an amnesty policy have seen an approximate 51 percent increase in calls to emergency medical services. He talked about educational efforts currently taking place on college campuses.

Chairman Lodge asked if Mr. Fisher talked to trial lawyers about this bill. **Mr. Fisher** responded that he did and there was some concern about civil claims, but they decided they are comfortable with the current language of the bill.

Senator Lee asked what happens if police respond as intended in this bill and they find other substances. **Mr. Fisher** answered that section 2 of the bill addresses this topic by stating that there is no immunity beyond the minor in possession or minor consumption of alcohol charges.

MOTION:

There being no further questions, **Senator Lee** moved that **H 521** be sent to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**. Chairman Lodge will be the floor sponsor.

H 503

Relating to Trust Deeds and the Definition of "Trustee." Representative

Luke Malek presented this bill. This bill clarifies previous legislation by providing a more specific definition of "trustee."

Senator Anthon asked what the problem was and why this bill is necessary. **Representative Malek** answered that there was a legal case regarding a title to real property between a mechanic's lien claimant and the purchaser of a home under the non-judicial lien. The trustee sale of the home occurred while the lien's action was pending in the judicial system. The court decided in favor of the purchaser and held that the trustee was the owner of real estate under Idaho Code § 45-1502. **Senator Anthon** asked if this case concerned a creditor. **Representative Malek** replied that it was a foreclosure. He deferred to Hillary Vaughn.

TESTIMONY:

Hillary Vaughn, Attorney and Underwriting Counsel, First American Title, spoke in favor of this bill. She stated that the goal of this legislation is to return to prior Park-West case law. Legislation from last year provided that a trustee is not the owner or reputed owner of real estate for the purpose of foreclosure of a mechanic's lien action. She reiterated that this bill simply better defines "trustee." **Senator Anthon** asked about trustees acting in a fiduciary capacity. **Ms. Vaughn** answered that this bill does not touch fiduciary. This bill talks specifically about trustees under a deed of trust.

Senator Burgoyne asked if the bill language is meant to address foreclosure issues. **Ms. Vaughn** replied that this language primarily arises in the context of foreclosure. **Senator Burgoyne** asked what other contexts this bill would deal with. **Ms. Vaughn** explained that the concern is with the trustee being identified as the owner or reputed owner of real property and how this would apply to land-use actions and other judicial concerns. **Senator Burgoyne** asked if the current language is meant to address foreclosure issues. **Ms. Vaughn** asked for clarification on the question. **Senator Burgoyne** commented that this bill is aimed at amending previous legislation. Does that previous legislation deal solely with foreclosure issues? **Ms. Vaughn** indicated that the previous legislation deals with the role of a trustee under a deed of trust. **Senator Burgoyne** asked if the powers are triggered by foreclosure. **Ms. Vaughn** responded that the powers are triggered by the grant of the trustee. **Senator Burgoyne** commented that in a foreclosure with a mechanic's lien, property is sold or is auctioned for exactly the same price as on the deed of trust. He asked how in a case like this hypothetical one, what happens under the new language being added to the current Idaho Code. **Ms. Vaughn** answered that nothing different would happen in this scenario. The only thing that would be different is that if a lien claimant sought to foreclose, they would also name the trustee as one of the necessary parties of interest in closing the action.

MOTION:

There being no further questions, **Senator Anthon** moved to send **H 503** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**. Senator Anthon will be the floor sponsor.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 3:30 p.m.

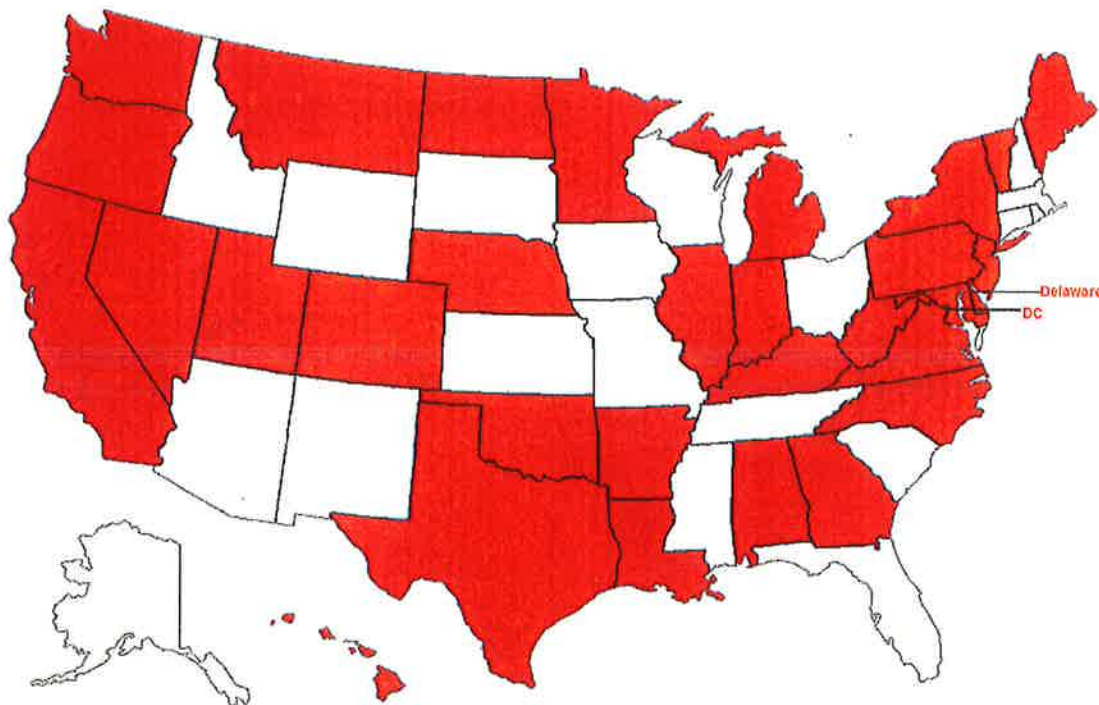
Senator Lodge
Chair

Carol Cornwall
Secretary



The Medical Amnesty Law

Medical Amnesty legislation, or 911 Good Samaritan, 911 Lifeline, and Alcohol Amnesty as it is sometimes referred to, has been passed in 31 states and Washington, D.C. Although the wording and specific requirements of each state's bill differs slightly, the intent is to grant limited immunity from a state's Minor in Possession of alcohol (MIP) charge in certain circumstances where they make contact with officials during an emergency. Each shaded state below has passed a type of Medical Amnesty law. Click on a shaded state to read more about each law.



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Alcohol related unintentional incidents are a leading cause of death among young people in the United States.



A Cornell University study concluded that while 19% of college students reported that help probably should have been called for a highly intoxicated individual they were with, only 4% actually made the call. 68% of teens report that they fear getting in trouble and being cited by law enforcement when they drink.



In a one year period following the implementation of one Medical Amnesty policy, the number of alcohol-related EMS calls increased by almost 700%. Studies also show that while 911 calls increased and fear of judicial repercussion decreased, drinking levels stayed the same or dropped suggesting that the presence of the policy has not encouraged drinking.

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Monday, March 14, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approve Minutes of February 26, 2016	Senator Lee and Senator Nonini
JUDICIAL APPOINTMENT:	Vote on Judicial Appointment of Reed W. Larsen	
<u>H 558</u>	Relating to the Uniform Probate Code	Michael Henderson, Counsel for the Supreme Court
<u>H 508</u>	Relating to bail enforcement agents	Roy Eiguren

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 14, 2016

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Johnson, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Senator Davis

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Lee** moved to approve the Minutes of February 26, 2016. **Senator Nonini** seconded the motion. The motion carried by **voice vote**.

JUDICIAL APPOINTMENT VOTE: **Senator Anthon** moved to send the Judicial Appointment of Reed W. Larsen to the Judicial Board to the floor with recommendation that he be confirmed by the Senate.

H 558 **Michael Henderson**, Counsel for the Idaho Supreme Court, stated that **H 558** has been proposed by the Supreme Court's Guardianship and Conservatorship Committee. It addresses situations where a minor has a claim and a settlement of that claim is being proposed. **Mr. Henderson** pointed out that Idaho Code § 15-5-409a provides that the minor's parents can submit a compromise of the claim to the court for approval. Because there are times when there are no parents, or the parents may not be the appropriate persons to submit the claim, this bill amends the code to allow other persons with responsibility for the child, e.g. a conservator, guardian or other legal representative of the child, to submit the compromise to the court for approval. **Mr. Henderson** explained that it also establishes a priority for these persons to submit the compromise and sets forth detailed information that would have to be submitted so the court can determine what is in the best interest of the minor.

Senator Anthon asked Mr. Henderson what information needs to be disclosed, or not disclosed, so that the case isn't weakened. A brief discussion followed regarding the details of disclosure.

Senator Souza asked why parents are listed third in the order of priority. **Mr. Henderson** responded that if this situation exists, it is because there is some kind of problem with the parents (absent, incapacitated, abusive), so the conservator is responsible for the protection of the child. The court can find the parents to be capable, in which case they can do some compromising.

MOTION: **Senator Lee** moved to send **H 558** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

Roy Eiguren, Eiguren Ellis Public Policy Firm, stated that **H 508** was prepared at the request of Representative Richard Wills. **Mr. Eiguren** disclosed that he represents the Idaho Bail Coalition, Two Jinn Corporation, which is the holding company for Aladdin Bail Bonds and the Idaho Chiefs of Police Association. Additional contributors to the bill represented other law enforcement and bail agents organizations.

Mr. Eiguren advised that **H 508** provides a set of statutory requirements that bail enforcement agents (agents), also known as bounty hunters, must follow in making an arrest in Idaho. Currently there is only one requirement regulating agents operating in Idaho. The Idaho Bail Act provides that any person may arrest a fleeing defendant provided that the person has an affidavit from a court authorizing that person to make an arrest.

Mr. Eiguren pointed out that the foci of the bill are to

1. prohibit agents from representing in any way that they are law enforcement officers, and they may be charged with a misdemeanor if there is such representation inferred;
2. require they be identified during the course of an arrest by wearing an outer garment that identifies them as agents; and
3. require that they complete a background check.

Mr. Eiguren indicated that agents must:

1. be 21 years of age or older,
2. be a citizen or legal resident of the United States and
3. possess a valid Idaho enhanced license to carry concealed weapons (license) or possess such a license from another state that is recognized by the Idaho Attorney General even if the agent does not carry a concealed weapon when making an arrest.

Some of the requirements for the license are a complete background check by the Idaho State Police and a qualified handgun course. There are also a number of prohibitions, including being a felon.

Senator Burgoyne inquired if there is any opposition from the Idaho bail bond people. **Mr. Eiguren** replied that he did know of any.

Senator Nonini, in reference to Beth Chapman's written testimony (see attachment 1), pointed out that the bill does not require an agent to carry a weapon, as opposed to her contention that it does. **Mr. Eiguren** replied that the Senator is correct. There is no requirement for an agent to carry a weapon.

Senator Souza asked what additional restrictions are listed for the license. **Mr. Eiguren** enumerated the requirements as listed in Idaho Code § 18-3302. In reply to Senator Souza's question about the purpose of requiring the license, **Mr. Eiguren** related that it was to ensure that a background check would be completed for potential agents.

TESTIMONY: **Michael Kane**, Sheriffs' Association (Association), informed the Committee that the Association supports this bill. Bail enforcement is very dangerous as the agents are lay people who are apprehending fugitives. There are two reasons why the license is important. First, it ensures a certain level of training. Second, it requires a background check, eliminating individuals who fall into one of the restrictions listed in Idaho Code § 18-3302.

Senator Burgoyne asked, if the permitless carry bill passes, if the State will be able to allow these licenses. **Mr. Kane** explained the licenses could still be issued because there are people who want enhanced licenses and there are zones where you can't carry even if the permitless law passes.

Senator Souza inquired why, if a felon has served time, can't the individual carry a weapon. **Mr. Kane** advised that felons who have completed their sentence can open carry if the felony was not on the list of crimes in Idaho Code § 18-310, which includes murder, kidnapping and rape. Those felons cannot get a concealed carry license.

John M. Robles, Bail Enforcement Agent, remarked that there needs to be some kind of regulation for agents, but this bill doesn't address the actual training they need in order to perform the duties required of an agent. He explained that his own training was through a Peace Officers Standards and Training (POST) trainer from Idaho. This training earned Mr. Robles the traditional badge he carries, and he was concerned that the proposed badge will not be adequate identification. **Mr. Robles** observed that Idaho has no models, so Aladdin Bail Bonds followed Washington's model. Washington is heavily regulated and agents are required to have training on how to properly apprehend people, how to transport them and other issues regarding arresting people and putting them back in custody. Washington also has regulations for identification of agents, including wearing a ballistic vest with labeling stating they are agents. Having taught the concealed carry class, **Mr. Robles** declared that this training is not sufficient for agents' training.

Senator Lee asked if he was proposing more requirements for training. **Mr. Robles** answered that he was proposing more training, along with a more uniform badge than the one that is now proposed. He added that **H 508** also prohibits the wearing of the badge as agents may be mistaken for law enforcement, but it is more difficult to identify agents if they are not wearing a badge that is visible. **Senator Lee** asked if Mr. Robles felt there was anything in the bill that would preclude anyone from being able to take enhanced training for personal development or to better their own skills. **Mr. Robles** answered that there was not.

Senator Anthon inquired if it is typical, when an arrest is made, that the agent would be wearing identifiable apparel. **Mr. Robles** answered yes. **Senator Anthon** asked if it is ever not the case. **Mr. Robles** stated yes. **Senator Anthon** asked why an agent would not wear identifiable apparel. **Mr. Robles** replied that in highly dangerous situations they work more undercover. **Senator Anthon** inquired if Mr. Robles has worked with agents who were convicted felons. **Mr. Robles** answered that he has not.

Additional discussion ensued regarding the use of badges, the type of badges and why they are needed. Included in the discussion were issues regarding the use of a badge as it relates to being mistaken for a law enforcement officer.

Sean Scogran, Regional Supervisor for Northwest Surety Investigations, related that he has six investigators who work in bail enforcement. He advised that the agents seldom encounter any problems. He supported the bill, stating that it is a good first step for Idaho. He asserted that it needed to go further.

Senator Souza mentioned that Mr. Scogran was in a supervisory capacity over the team that was involved in a shooting in Idaho Falls. She asked if this situation is typical. **Mr. Scogran** replied that this is not typical, and there are instances where it goes the other way, with unarmed agents being gunned down. **Senator Souza** asked for further clarification, from cases in Idaho, where there were injuries or deaths because of agents not identifying themselves correctly and/or carrying or not carrying a weapon. **Mr. Scogran** answered that it is very rare that these types of incidents occur.

Representative Richard Wills, District 23, pointed out that the badge is similar to a city badge. He stated that he felt there is definitely some misconception about the badge being that of a law enforcement officer. If people see the different appearance of the badge, they look more closely to read what the badge says. **Representative Wills** stated that there will still be a safety concern, but this bill gives more requirements than Idaho has right now. He pointed out that wearing the identifiable apparel or not is optional based on the agent's perception of the level of danger in any given situation. He spoke of his respect for the professional agents who want to do the right thing for the right reasons.

Senator Johnson asked if there is any reason to have a license other than to obtain a background check. **Representative Wills** specified that it also requires additional training. He felt there was more to it than just to provide a means to obtain a background check. **Senator Johnson** referred to a letter from reality television personality Dog the Bounty Hunter, aka Duane Chapman (see attachment 2) and asked if this law would stop him from operating in the State of Idaho or if it could be made optional. **Representative Wills** replied that for the safety of the public, it would be unwise to arm an individual with a felony on his/her record.

Discussion continued regarding background checks, enhanced concealed carry permits and ways for the agent to be safer if a dangerous situation arises.

Mr. Eiguren explained that 14 different agencies from law enforcement and the commercial bail industry helped to draft this legislation. He pointed out that according to Idaho code at this time, there are basically no requirements for someone to operate as a bail agent. He expressed that the question is how much you want to regulate. He also related that the background check reveals much more than if an individual has a felony on his/her record. This bill is a simple process and can provide the background check without establishing a new agency.

MOTION:

Senator Burgoyne moved to send **H 508** to the floor with a **do pass** recommendation. **Senator Nonini** seconded the motion.

Senator Anthon commented that Mr. Eiguren has done an excellent job in touching lightly when proposing new legislation. He believes there is a need for this regulation but he needs to see more and may not support the legislation.

Senator Souza stated that she agrees with a lot in the bill but that she feels it may still be too heavy-handed for those who do the non-fugitive kind of work. She explained that she would like to see an alternative for getting a background check for those who do not need to carry a weapon. She also may not be supporting the bill.

Senator Burgoyne commented that if an agent is trying to arrest a fugitive, the fugitive may have a weapon and the agent will have to take that weapon. He indicated that people need to be knowledgeable about weapons, even if they are not carrying them. He does not think felons should be doing this type of work. **Senator Burgoyne** stated that he sees this bill as a modest step in the right direction.

Senator Lee said that she will support the bill. She said she felt it is a first step. She emphasized that a concealed carry permit is a very low standard of training. She feels that this legislation will lend credibility without adding licensure.

Chairman Lodge observed that anyone in this dangerous occupation should have a knowledge and understanding of firearms and what they can do to protect themselves if someone else has a firearm and they don't. She feels that it is important for them to have the enhanced carry permit.

**ROLL CALL
VOTE:**

Chairman Lodge called for a roll call vote. The motion carried by roll call vote, with **Senators Nonini, Johnson, Lee, Burgoyne** and **Jordan** voting aye. **Senators Souza** and **Anthon** voted nay.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 2:30 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

Beth Chapman

Attachment 1

-President-

Professional Bail Agents of the United States

Dear Senator,

I am writing to express concern and opposition to the current language in HB508. I have worked in the bail industry for 30 years and have worked with many states when they have issues come up that need to be addressed by law. I completely understand the desire by the bill authors to ensure the safety of the public but the bill as written will cause serious problems which I will outline below.

1. Section 1 subsection (c): This subsection is in the description of a "Bail Enforcement Agent" and defines that a bail enforcement agent is someone who "Possess a valid Idaho enhanced license to carry concealed weapons as defined in section 18-302K, Idaho Code, or possess a valid enhanced license to carry concealed weapons issued by another state, which license is recognized by the Idaho attorney general."

Issue: This basically states that in order to be considered a bail enforcement agent you have to get and keep a concealed carry permit. There are no other requirements to become an agent except this license.

The license does not guarantee that the person has any training to arrest or any education about the laws governing bail bonding. This would also force bail bondsmen who do not wish to have a conceal and carry license to get one.

Most bondmen and bail agents do not carry firearms and prefer to use equipment that will subdue a defendant rather than kill them. By forcing those assisting in recovery to carry firearms, you will create many more instances of defendants being shot or killed when they could have been subdued another way.

There is no use of force training included in the conceal and carry licensing process and any law enforcement officer will tell you the importance of training as to when to pull and use a firearm.

This provision is probably the most dangerous in the bill to the overall safety of the public because it forces people to carry guns who are not trained on how or when to use them while arresting someone. There is a big difference in using a firearm to defend yourself and using one while arresting someone.

2. Section 1 subsection (4): This section defines the credentials that a person must have to be considered a bail enforcement agent. It states that the only license an individual would need is a concealed and carry license. It also limits any "badge" to a metal plate that is 2.7 inches in length and 2.5 inches in width.

Issue: An Idaho enhanced license to carry concealed weapons does not qualify anyone to arrest an individual or provide training as to use of force. There should be no correlation between a conceal and carry license and bail enforcement.

Beth Chapman

-President-

Professional Bail Agents of the United States

Many times in the course of apprehending a defendant you need to identify yourself as a bail enforcement agent to people you are trying to get information from as to the whereabouts of the defendant. Restricting the use of a "badge" to this tiny metal plate removes the legitimacy of the bail agent in trying to locate the bad guy. If all you have is a metal plate that says "Bail Enforcement Agent" and a conceal and carry license then how is the general public going to know that this person has a legal right to arrest the defendant. It would make more sense to prescribe a bail enforcement badge and make it unlawful for anyone, not authorized, to use that badge.

There are many situations when a bondsman or bail enforcement agent who has a badge can de-escalate a situation with a defendant because the defendant knows they are there to legally apprehend them. Additionally, requiring bail agents to have a badge makes it easier for law enforcement to identify them if they come across them during apprehension or if a member of the public sees an apprehension and calls 911.

3. **Section 2: This section seeks to define who can surrender a defendant before a forfeiture or what we call pre-breach. It limits the surrender to a licensed bondman only.**

Issue: There are many situations where a bondman feels they need to take a defendant into custody before they forfeit their bond. These could include when the bondman feels they are a flight risk or if they have not met the conditions of their release like checking in with the bondsman or making their payments. Many times bondsmen need bail enforcement agents with these pre-breach surrenders as much as they do after a forfeiture. This would greatly limit their ability to take someone into custody and place the bondsman at great risk if they have to go alone.

With these issues under consideration, I am asking that you vote no on HB508 and allow industry professionals time to work with the authors to develop policy that will benefit the industry and meet the public safety needs of Idahoans. I have helped to develop policies like this in many states and am more than willing to help bring all stakeholders to the table to get good policy in place. Unfortunately, this bill as written will only cause more problems and place more people in greater harm. Thank you for your consideration.

Respectfully,

Beth Chapman

President, Professional Bail Agents of the United States



To whom it may concern:

I am writing to express my concern over the proposed language in HB508. I have been in the bail bonding industry for over 30 years and am currently licensed in 4 states. I have built a reputable career and TV franchise in the business of writing bail and returning defendants. I can tell you there are several problems with the language in this bill.

I have never used a firearm when returning a defendant and I teach bounty hunters and bondsmen to use every non-lethal option instead of a gun. This bill would require bail enforcement agents to get and keep a concealed and carry license in order to assist in returning a defendant. These people have not been trained on use of force and do not receive law enforcement training. Using a gun to defend yourself is very different than using one while arresting a defendant and I can tell you this policy will only result in more shootings and more danger to the public's safety. My recommendation would be to require bail agents to go through some kind of use of force training before allowing them to use firearms to apprehend.

Along those same lines, it is extremely important that bail enforcers and bondsmen carry badges as well. This bill would not allow them to carry badges. Bail enforcers are not trying to mimic cops but they are still put into very dangerous situations every day. A badge lends legitimacy and identification and many times that authority is enough to de-escalate situations. It also provides open and easy to recognize identification in the field. This is useful not only to law enforcement but also to the general public.

Also, federal law prohibits a felony conviction from being an indefinite precursor to obtaining a work license. By limiting those who can do this work to those who can obtain a conceal and carry license you forever restrict those who have had a conviction in their past. I myself was convicted of a felony 39 years ago and I served my time to society. Since then I have been very successful in my work and try to show those in trouble that they don't have to be criminals for the rest of their lives. Under this language, I and others like me would not be able to work in the state. I have helped many bondsmen in Idaho with their skips and I would like to do more work there in the future.

Thank you for considering my concerns. I want you to know that I am committed to helping your state with good policy measure to meet your needs and those in the industry.

Respectfully,

Duane "Dog" Chapman

AMENDED AGENDA #2
SENATE JUDICIARY & RULES COMMITTEE
1:00 P.M.
Room WW54
Friday, March 18, 2016

SUBJECT	DESCRIPTION	PRESENTER
MINUTES APPROVAL	Approve Minutes of February 22, 2016.	Senator Anthon and Senator Johnson.
	Approve Minutes of February 29, 2016	Senator Souza and Senator Burgoyne
	Approve Minutes of March 4, 2016	Senator Nonini and Senator Lee
FAREWELL	Farewell to Kanoa Nol and Cardston Stanford	
<u>RS24779</u>	Relating to Judge's salaries	Senator Davis
<u>H 494</u>	Relating to alcohol age violations	Senator McKenzie and Representative Luker

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 18, 2016

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Johnson, Lee, Burgoyne and Jordan

ABSENT/ EXCUSED: Senators Souza and Anthon

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:02 p.m.

MINUTES APPROVAL: **Senator Nonini** moved to approve the Minutes of February 22, 2016. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.
Senator Burgoyne moved to approve the Minutes of February 29, 2016. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.
Senator Nonini moved to approve the Minutes of March 4, 2016. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

FAREWELL: **Senator Lodge** expressed gratitude to Committee Page Cardston Stanford and to Intern Kanoa Nol for their contributions to the Committee. **Mr. Stanford** and **Mr. Nol** shared insights they have gained while serving the Committee.

RS 24779 **Senator Davis** pointed out that this bill deals with judicial salaries. He shared the background of judges' salaries, explaining that they are set by the Legislature. **Senator Davis** reviewed the setting of judges' salaries two years ago, including ways to get attorneys and magistrate judges to apply for district court positions. Improving the salary for district court judges was seen as a way to accomplish this. Other levels of the judiciary received increases, but the magistrate judges received very little. At that time these judges were told the Legislature would address their salaries in 2016.

This bill proposes a 4 percent increase for the magistrate judges and a 3.6 percent increase for the district court judges.

Senators Burgoyne, Senator Lee and Chairman Lodge made Rule 39-H disclosures due to having relatives who would be affected by this bill.

MOTION: **Senator Johnson** moved to send **RS 24779** to print. **Senator Nonini** seconded the motion. The motion passed by **voice vote**.

H 494

Representative Lynn Luker, District 15, observed that **H 494** continues an effort started last year to adjust some misdemeanors to infractions in order to relieve the burden on public defenders and to better align punishment with the crime. The Criminal Justice Commission (Commission) recommended the concept of this bill, which deals with possession and consumption of alcohol by minors. **Representative Luker** explained that it would reduce the first violation from a misdemeanor to an infraction, but an additional violation would be charged as a first misdemeanor. Some concern was expressed by law enforcement regarding those violators under 18. He explained that this would be a status offense, allowing the violators to be taken into custody temporarily under the jurisdiction of the juvenile courts. The bill also addresses the crossover between code sections and funding mechanisms.

Senator Burgoyne asked how this bill relates to the bill dealing with minors in consumption, which recently passed through the Committee. **Representative Luker** clarified that the bill Senator Burgoyne referred to was the expungement bill. He explained that the expungement bill talked about violations, not misdemeanors or infractions, so the two bills will correlate. **Senator Burgoyne** asked if Representative Luker wanted to address the issues of juvenile jurisdiction and status offense. **Representative Luker** replied that he reviewed those issues with the American Civil Liberties Union (ACLU), considering if proceeding this way would mean double jeopardy. Because an infraction is a civil offense, they felt this would not pose a problem.

Senator McKenzie pointed out that a misdemeanor is a crime and most young people do not realize when accepting a plea agreement that it will affect getting jobs and going to school. He stated that there needs to be a change in how we deal with underage drinking, using evidence-based treatment and best practices with sanctions beyond a fine. These sanctions are most effective if they involve the family. **Senator McKenzie** explained that **H 494** would move the first offense to an infraction, but keep the driving restriction. This is a serious issue for young drivers, and affects the family as well. He noted that there needs to be an amendment to ensure the driving restriction is included as one of the sanctions, even though the offense will be an infraction instead of a misdemeanor.

MOTION: **Senator Lee** moved to send **H 494** to the 14th Order of Business. **Senator Burgoyne** seconded the motion. The motion passed by **voice vote**.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 1:33 p.m.

Senator Lodge
Chair

Carol Cornwall
Secretary

AMENDED AGENDA #1
SENATE JUDICIARY & RULES COMMITTEE
8:00 A.M.
Room WW54
Tuesday, March 22, 2016

SUBJECT	DESCRIPTION	PRESENTER
<u>H 556</u>	Relating to foster care	Representative Perry
<u>S 1420</u>	Relating to salaries of judges	Senator Davis
<u>H 580</u>	Relating to Rape	Sara Thomas

If you have written testimony, please provide a copy of it along with the name of the person or organization responsible to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Lodge

Vice Chairman Nonini

Sen Davis

Sen Johnson

Sen Souza

Sen Lee

Sen Anthon

Sen Burgoyne

Sen Jordan

COMMITTEE SECRETARY

Carol Cornwall

Room: WW48

Phone: 332-1317

email: sjud@senate.idaho.gov

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Tuesday, March 22, 2016

TIME: 8:00 A.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Nonini, Senators Davis, Souza, Lee, Anthon, Burgoyne and Jordan

ABSENT/ EXCUSED: Senator Johnson

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 8:00 a.m.

H 556 **Representative Christy Perry**, District 11, explained that research shows children abruptly removed from homes where they have formed attachments may suffer a great deal of distress akin to Post Traumatic Stress Disorder (PTSD). The Office of Performance Evaluations (OPE) regarding juvenile offenders has found most frequently juveniles committed to State custody have been in the Department of Health and Welfare's (DHW) child protection system. There have been some concerns about the processes for children in foster care for some time, and numerous pleas have been made to make changes in the system. **Representative Perry** emphasized that this bill is not an indictment against DHW or the social workers. It is about making changes and improvements for the children. After the bill passed the house, there were issues that needed to be addressed, so there has been continuing discussion between the Senate and the House. Other stakeholders have been included in this discussion, including DHW. She stated that changes have been agreed upon and that she will be requesting that **H 556** be sent to the 14th Order of Business for amendment.

Representative Perry described the changes that **H 556** will make to foster care procedures. She indicated that the courts will be included as a consenter to select the foster parents for a child. Parameters regarding the amount of time family members have to declare their desire to be part of the process were set, along with changes in the permanency plan and its process. Continuing changes will address what will be included in the permanency plan. She pointed out that two specific problems became apparent during the work on this bill. First, the children have been moved repeatedly. Once they have been in a home for quite some time, they are moved. The second is that what is being told to the foster parent is not always the real reason, as in a case where the foster parents were not following the directions of DHW. The foster parents had been told, however, that the reason for the move was that they had gotten too close to the child.

In considering a placement by DHW, **Representative Perry** pointed out that placement needed to be in the least restrictive environment following a priority list: 1.) a fit and willing relative; 2.) a fit and willing nonrelative with a significant relationship with the child; and 3.) foster parents and other persons licensed in accordance with statute. These were to apply to temporary placement, but it was also used for permanent placement. In some instances a child would be placed with the foster parents, who had the understanding that they would be able to adopt the child. If relatives arrived who wanted the child, even if they did not have a relationship with the child, they would be given preference. This bill would allow considerations beyond unification of the family if such unification is not in the best interest of the child. The goal is to have a child stay in a placement instead of being moved, allowing stability and bonding.

Because there are still issues and more changes that need to be made, **Representative Perry** reported that an interim committee will be established to investigate the concerns and bring back some ideas for improvement in the foster care program, as well as concerns that have become apparent in guardianship situations.

Senator Burgoyne asked Representative Perry if she had seen the information from the Shoshone-Bannock Tribes (see attachment 1). **Representative Perry** replied that she had not.

Senator Souza asked about the addition of the term "or permanent" regarding placement. After some discussion, **Senator Davis** advised that these will be the words used, as agreed by all of the parties in the discussions, pending the findings of the interim committee. **Representative Perry** confirmed that this had been the agreement.

TESTIMONY:

McKenzie Lyon, Shoshone-Bannock Tribes (Tribes), indicated that language in this bill has been changed to support the Indian Child Welfare Act (ICWA). She expressed appreciation for attention to the concerns of the Tribes. **Senator Davis** explained the work that went into providing the language needed by the Tribes to consider the ICWA issues.

Terry Murrison, a foster parent, supported the bill, pending the consideration of an interim committee. She shared her perspective on these issues and emphasized her strong belief that the child should be with parents with whom a bond has been established. **Ms. Murrison** shared examples of what happens to children without human bonding.

Val and Brian McCauly spoke together in support of the bill. They commented that they are distressed by the way decisions have been made in removing children based on "becoming too close to the child." They shared their experience of having a child removed from their home. **Ms. McCauly** stated that as foster parents they are aware of the fact that at some point they will have to give the child up, but that they still have the natural instincts toward the children. She added that their motivation is not to bring a child back into their home, but to see changes so the same trauma does not happen to others. **Ms. McCauly** emphasized that foster children's rights to due process according to the 14th Amendment are not being protected by the courts. The most important thing is to protect the best interest of the child, not the foster parents.

Merritt Dublin, a foster parent, spoke in support of the bill. **Ms. Dublin** indicated that she is impressed by the way this legislation has dealt with the issues, and that it is very much appreciated. She felt the language is problematic but that this will be addressed by the interim committee. **Ms. Dublin** explained the federal government's role in establishing some of the processes regarding placement of children in foster care as opposed to kinship care. She suggested that both words, "temporary and permanent," be removed. She felt it was important to give equal weight to relatives and foster parents in the placement decision.

Jeannie Swenson, a foster parent, spoke in support of the bill. **Ms. Swenson** has had 24 foster children and one adoptive child who had been her foster child. She reiterated the concerns of others regarding the emotional trauma foster children go through. These children matter and need a permanent place.

Joshua Wikard, Ada County Public Defender, spoke in opposition to the bill. He has handled many child protection cases. He understands that if there is to be a removal due to safety concerns, notice in advance of the removal is to be given to the foster parents. **Mr. Wikard** is concerned that the biological parents are not given that same notice if their children are going to be moved from their current foster placement. He urged the Committee to add language that the biological parents will also be given notice.

Senator Davis requested that Mr. Wikard peruse the Child Protective Act and advise the Committee of areas of concern with regard to notification.

Kari Wardel, a foster parent, spoke in support of the bill and shared her experience as a foster parent and problems that occurred regarding changes in placement of her foster child. She noted concerns that DHW thinks it is okay to move children if the foster parent doesn't agree with them. She has been told by DHW representatives that children are resilient and can attach to any caregiver. She asked that the interim committee consider the timeframes for family to come forward.

Senator Davis explained that the State needed to give thoughtful consideration to timeframes and public policy. It is one of the items the interim committee will address.

Stacey Hoffman, social worker and former foster parent, spoke in support of the bill, stating that in the years she was a foster parent she experienced the same situations that have been expressed here by others. She referred to the situation involving her own children and to situations involving inmates for whom she has been a social worker. She emphasized the need for judicial oversight to assist DHW in making appropriate placements.

Galen Carlson, Ada County Deputy Prosecutor and Supervising Prosecutor for the Child Protection Unit, spoke in opposition to the bill. **Ms. Carlson** expressed her appreciation for the changes proposed in this bill and the concerns that have been addressed. She stated that the Idaho Prosecuting Attorneys Association (IPPA) would like to be included on the interim committee. She stated that her main concern with the legislation is delaying permanency for children. She pointed out that as the bill is written, if the placement is contested a judge has to approve or deny the placement. She said she anticipates increased litigation that will delay permanency decisions. She would like to see the interim committee look at this issue in terms of the timeline for getting a decision from the judge.

Senator Lee asserted that, although the legislation is not perfect, an effort is being made here to reduce the time involved. Having judicial input should streamline the process. **Ms. Carlson** commented that they have litigated out-of-state placements and the placements have been delayed up to a year. She felt that having the judges give recommendations would be okay, but having them make the placement decision can cause litigation. **Senator Lee** replied that this is an issue that should be addressed in the interim committee.

Senator Burgoyne asked if IPPA has a position regarding moving the bill to the amending order for the agreed upon amendments and addressing further issues through the interim committee. **Ms. Carlson** replied that she objects to the involvement of the judges as previously mentioned. For that reason she is objecting on behalf of IPPA. **Senator Burgoyne** asked if she is saying the bill should not be moved to the amending order. **Ms. Carlson** asked Holly Kool from IPPA to discuss the legislative process. **Holly Kool** stated that IPPA would like them to move the legislation to the amending order. IPPA appreciates the amendments that are here and would like to be part of the interim committee to work on the other issues.

Senator Davis indicated that DHW had no objection to the removal of "temporary or permanent" and asked Russ Barron to confirm if that is the case. If DHW does not have an objection, a new amendment to that effect will accompany the bill to the amending order.

Russ Barron Deputy Director, Department of Health and Welfare, expressed appreciation for the work that has gone into the reform effort. He agreed to the removal of the three words. He commented that there is a lot more to talk about and there are solutions that can be enacted.

Russell and Jamie Menth were unable to be in attendance. Their written testimony is attached (see attachment 2).

MOTION: **Senator Davis** moved to send **H 556** to the 14th Order of Business for possible amendment. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1420 **Senator Davis** observed that the Committee had a good explanation of this bill relating to judges' salaries. The only change is that the reference to the Attorney General in the first SOP is being eliminated in a revised SOP because this bill will not affect him.

Senators Lee, Burgoyne and Lodge all disclosed under Rule 39H that they may be affected by this bill as they have relatives in the judicial system.

MOTION: **Senator Davis** moved to send **S 1420** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 580 **Sara Thomas**, State Appellate Public Defender, stated that she is here in her capacity as Chair of the Criminal Justice Commission (Commission). She explained that this bill is a portion of a previous bill, **S 1277**, which had elicited some serious concerns from the Senate floor and from citizens. Because of these concerns the Commission requested that **S 1277** be held in committee in the House, and they introduced **H 580**, which is the portion of the original bill that deals with rape. The Commission will reconsider the original bill and bring a better proposal next year on sexual battery of an adult. **H 580** updates Idaho's law to be gender neutral, updates the rape of a spouse statute to address those circumstances where harm is threatened to a third party and removes the requirement that a victim resist in certain circumstances.

MOTION: **Senator Davis** moved to send **H 580** to the floor with a **do pass** recommendation.
Senator Anthon seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman Lodge** adjourned the meeting at 9:45 a.m.

Senator Lodge
Chair

Carol Cornwall
Secretary